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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

SOUTHERN OHIO STATE EXECUTIVE OFFICES OF CHURCH OF GOD and DR. HAROLD B. THOMPSON, SR., State Overseer,

Petitioners,

v.

FAIRBORN CHURCH OF GOD AND REV. ANCIL CARTER,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Ohio

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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QUESTIONS PRESENTED

1. Whether the property award to the local church violates the hierarchical denomination's First Amendment right to free exercise of religion by nullifying its ecclesiastical decision, and impermissibly entangles secular courts in the hierarchical denomination's determination of church matters, where the Ohio court refused to defer to the Church of God denominational hierarchy's decision about property ownership, which is an issue of "doctrine or polity," despite the court's holding that the church of God is a hierarchical denomination.

2. Whether the property award to the local church violates the hierarchical denomination's First Amendment right to free exercise of religion by nullifying its ecclesiastical decision, and impermissibly entangles secular courts in the hierarchical denomination's determination of church matters, where the Ohio court refused to consider and follow hierarchical church canons for property ownership in judicially applying "neutral principles of law" (if "neutral principles" rather than compulsory deference is the applicable standard).

3. Whether the property award to the local church violates the hierarchical denomination's First Amendment right to free exercise of religion by nullifying its ecclesiastical decision, and impermissibly entangles secular courts in the hierarchical denomination's determination of church matters, where the Ohio court refused to recognize the constructive trust that the hierarchical denomination's canons create and that Ohio law allows.

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Petitioners SOUTHERN OHIO STATE EXECUTIVE OFFICES OF CHURCH OF GOD and DR. HAROLD B. THOMPSON, SR. respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio entered in this proceeding on September 6, 1989.

OPINIONS BELOW

The decision of the Supreme Court of Ohio dismissed Petitioners' appeal (Appendix I) on September 6, 1989, and is unpublished. The Court of Appeals of Ohio had affirmed the grant of summary judgment for Respondents (Appendix II), and that decision is unpublished. The decision of the Common Pleas Court of Greene County, Ohio (Appendix III) is also unpublished.

JURISDICTION

The judgment of the Supreme Court of Ohio is dated and was entered on September 6, 1989 (Appendix I). Accordingly, the deadline for this Petition is December 5, 1989.

This Court's jurisdiction lies under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the U.S. Constitution. Pertinent parts of these amendments are reproduced in the Appendix to this Petition.

STATEMENT OF THE CASE

Petitioner Southern Ohio Executive Offices of Church of God ("Executive Offices") is an Ohio not-for-profit corporation, acting by and on behalf of the Church of God, Cleveland, Tennessee (the "denomination" or "hierarchy"), which in turn is governed by a constituted General Assembly and a General Executive Committee. The General Assembly is a judicatory body in matters of ecclesiastical doctrine and government. The chief officer of the Executive Offices is the State Overseer (Bishop), at most relevant times Dr. Harold B. Thompson. The chief officer of the denomination is the General Overseer (Bishop).[1]

Respondent Fairborn Church of God ("Fairborn Church") is an Ohio not-for-profit corporation organized in 1963, and preceded

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[1] "Overseer" is the modern English equivalent of the Greek word translated "bishop" in various passages of the King James Version of the New Testament (*e.g.*, Philippians 1:1; I Timothy 3:1-2; Titus 1:7). J. Strong, The Exhaustive Concordance of the Bible 128 (n.d.).

by an unincorporated association, at all times a local unit of the denomination. Its pastor and corporate chief executive officer is Respondent Rev. Ancil Carter.

As is discussed in more detail below, the doctrinal position of the denomination, expressed in numerous denominational canons, is that real property held by a local congregation is held in trust for the use and benefit of the denomination. For example, denominational canons require local congregations to use specified language in all property deeds, require that all conveyances be approved by the State Overseer (Bishop), and require the conveyance of all real property to the State Board of Trustees should the local congregation cease to be a part of the denomination. These canons regarding church property were known to Respondents, who nevertheless deliberately failed to comply with them.

The denomination first learned of Respondents' circumvention of denominational canons in 1986. The denomination then filed with the county recorder an affidavit asserting its interests in the property, casting a cloud on the titles. Petitioners then filed a complaint for declaratory judgment asking the Common Pleas Court to determine and declare that the Fairborn Church holds title to the property in trust for the denomination and was and is required to obtain the permission of the denomination prior to conveying any interest in the property.

Each of the three lower courts ruled in favor of Respondents, and discussed but rejected the constitutional arguments of the denomination. See Appendix I; Appendix II, slip op. at 3, 26; Appendix III, slip op. at 3, 6.

REASONS FOR GRANTING THE WRIT

The First Amendment compels deference to the internal decisions of hierarchical churches regarding property disputes, as this Court reaffirmed in *Jones* v. *Wolf*, 443 U.S. 595, 602 (1979). The First Amendment no more allows lower courts, under the guise of "neutral principles of law," to override denominational decisions in hierarchical churches than it allows courts to override local church decisions in congregational churches. The role of the "neutral principles" approach is merely to provide courts with an alternative approach in cases where, unlike the case here, the

compulsory deference rule is not mandatory—either because the church is neither hierarchical nor congregational, or because the church has not made a property determination at the appropriate level. The Ohio Supreme Court's confusion of these principles threaten a clear body of law on church property disputes.[2]

I. THE RELIGION CLAUSES AND THIS COURT'S CHURCH PROPERTY DISPUTE CASES CONFLICT WITH THE OHIO COURT'S REFUSAL TO DEFER TO THE CHURCH OF GOD DENOMINATIONAL HIERARCHY'S DECISION ABOUT PROPERTY OWNERSHIP, WHICH IS AN ISSUE OF "DOCTRINE OR POLITY," DESPITE THE COURT'S HOLDING THAT THE CHURCH OF GOD IS A HIERARCHICAL DENOMINATION.

AS A RESULT, THE PROPERTY AWARD TO THE LOCAL CHURCH VIOLATES THE HIERARCHICAL DENOMINATION'S FREE EXERCISE OF RELIGION BY NULLIFYING ITS ECCLESIASTICAL DECISION, AND IMPERMISSIBLY ENTANGLES SECULAR COURTS IN THE HIERARCHICAL DENOMINATION'S DETERMINATION OF CHURCH MATTERS.

A. THE CHURCH OF GOD DENOMINATION IS A HIERARCHICAL DENOMINATION, AS THE OHIO COURT DETERMINED.

In *Watson* v. *Jones*, 80 U.S. 679, 722-23 (1872), this Court described hierarchical denominations as follows:

> [T]he religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical

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[2] On constitutional law and church property disputes, *see generally* Adams and Hanlan, *Jones* v. *Wolf: Church Autonomy and the Religion Clauses of the First Amendment*, 128 U. Pa. L. Rev. 1291 (1980); Curtis, *Judicial Intervention in Church Property Disputes—Some Constitutional Considerations*, 74 Yale L.J. 1113 (1965); Sirico, *The Constitutional Dimensions of Church Property Disputes*, 59 Wash. U. L.Q. 1 (1981); Comment, *Church Property Dispute Resolution: An Expanded Role for Courts After Jones v. Wolf?*, 68 Geo. L.J. 1141 (1980); Comment, *Church Property Disputes: The Trend and the Alternative*, 31 Mercer L. Rev. 559 (1980); Note, *Church Property Disputes in the Age of "Common-Core Protestantism": A Legislative Facts Rationale for Neutral Principles of Law*, 57 Ind. L.J. 163 (1982); Note, *Judicial Intervention in Disputes Over the Use of Church Property*, 75 Harv. L. Rev. 1142 (1962).

> tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.

See also Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 369 (1970) (Brennan, J., concurring).

The Court of Appeals of Ohio had no doubt that the Church of God International[3] of Cleveland, Tennessee is a hierarchical denomination under this Court's definitions, and is led by bishops (overseers).

> The fundamental definition of an hierarchical church relationship was stated in *Watson, [sic]* v. *Jones, supra*, and quoted earlier. *Those factors and tests are met here.* The General Assembly of the Church of God has the right to establish law to govern its constituent members, including local churches. Operating through its State Overseer [Bishop], the General Assembly appoints district overseers [bishops] and pastors. The General Assembly thus authorizes the creation of local churches, and did so in this case. Indeed, the Fairborn Church admits that it is bound by the decisions of the General Assembly in matters of doctrine, teaching and polity, though it denies the same "with reference to legal or property matters." *The Fairborn Church is, therefore, in a hierarchical relationship to and with the Church of God, Cleveland, Tennessee.*

Southern Ohio State Executive Offices of Church of God v. *Fairborn Church of God*, No. 88 CA 71, slip op. at 17 (Ct. App. Ohio, March 29, 1989) ("*Fairborn Church of God*"). The Ohio Supreme Court, in its brief opinion dismissing the denomination's appeal, did not disagree with this finding. *Southern Ohio State Executive Offices of Church of God* v. *Fairborn Church of God*, No. 89-1067 (Sept. 6, 1989). *See* Appendices I-II *infra*. All other courts that have examined the polity of the church of God, Cleveland, Tennessee in connection with property disputes have also concluded that it is a hierarchical denomination, but contrary to the Ohio

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[3] Plaintiffs are the Southern Ohio diocese and bishop (overseer) of the Church of God International. The Church of God International of Cleveland, Tennessee is one of the two largest Pentecostal denominations, as a century-old denomination; and is different from several smaller "Church of God" denominations, some of which are nonhierarchical.

courts, have consequently awarded church property to the hierarchy.[4]

B. THE FIRST AMENDMENT AND THIS COURT'S HOLDINGS REQUIRE JUDICIAL DEFERENCE TO ECCLESIASTICAL DECISIONS INVOLVING "DOCTRINE OR POLITY" OF HIERARCHICAL DENOMINATIONS.

In *Watson* v. *Jones*, 80 U.S. 679 (1872), this Court articulated the "compulsory deference" rule, requiring that civil courts defer to and consider themselves bound by the decision of a hierarchical denomination's judicatory in all intrachurch disputes, including church property disputes.[5]

> In this class of cases we think the rule of action which should govern civil courts . . . is, that, whenever the *questions of discipline, or of faith, or ecclesiastical rule, custom, or law* have been decided by the highest of these church judicatories to which the matter has been carried, *the legal tribunals must accept such decisions as final, and as binding on them*, in their application to the case before them.
>
> . . . .
>
> . . . All who unite themselves to such a body do so with an *implied consent to this government*, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved

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[4] *See Kelley* v. *Riverside Boulevard Independent Church of God*, 44 Ill. App. 3d 673, 3 Ill. Dec. 298, 358 N.E.2d 696 (1976); *Polen* v. *Cox*, 267 A.2d 201 (Ct. App. Md. 1970); *Sustar* v. *Williams*, 263 So. 2d 537 (Miss. 1972); *Church of God of Madison* v. *Noel*, 318 S.E.2d 920 (W. Va. 1984).

[5] Quite apart from its grounding in general notions of associational freedom and autonomy—and apart from its status as a particularly well-established instance of such associational liberty—the doctrine of judicial deference to a religion's internal decision-making organs has deep roots in our history; far from representing a delegation of political power to religious bodies, the doctrine represents a recognition of their necessary separation from governmental entanglement, a separation designed as much to protect the state as to defend the church.

The New Testament provided early precedent for civil deference to religious authority on ecclesiastical questions. And throughout most of the Middle Ages, the notion of autonomous civil and religious jurisdictions—of dividing God's dispute-resolving realm from Caesar's—commanded wide respect. Such breaches as occurred could be traced to the occasional union of church and state authority in the same heads in parts of the Continent, in England, and in some of the American colonies—a union now understood to be forbidden by the first amendment.

L. Tribe, American Constitutional Law 877 (1978) (footnotes omitted).

> by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that *those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.*

Id. at 727, 729 (emphasis added).[6] *See also Jones* v. *Wolf*, 443 U.S. at 602.

1. The Compulsory Deference Rule Applies to Property Decisions of Hierchical Churches.

The Court has repeatedly applied the compulsory deference rule in cases involving intrachurch disputes whose resolution requires the application of religious law or polity. In *Kedroff* v. *Saint Nicholas Cathedral*, 344 U.S. 94 (1952), the Court reversed the New York Court of Appeals' holding that the Religious Corporations Law of New York transferred administrative control of the hierarchical Russian Orthodox churches in North America from the Supreme Church Authority in Moscow to the authorities selected by a convention of the North American churches.

> By fiat [the Religious Corporations Law] *displaces one church administrator with another.* It *passes the control of matters strictly ecclesiastical from one church authority to another.* It thus *intrudes for the benefit of one segment of a church the power of the state* into the *forbidden area* of religious freedom contrary to the principles of the First Amendment. . . . New York's [Religious Corporations Law] *directly prohibits the free exercise of an ecclesiastical right*, the Church's choice of its hierarchy.

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[6] *Watson* v. *Jones* was decided at a time when the First Amendment was not considered to be applicable to the States through the Fourteenth Amendment, and before *Erie R. Co.* v. *Tompkins*, 304 U.S. 64 (1938), made state law applicable in diversity cases. But beginning with *Kedroff* v. *Saint Nicholas Cathedral*, 344 U.S., at 116, this Court has indicated repeatedly that the principles of general federal law announced in *Watson* v. *Jones* are now regarded as rooted in the First Amendment, and are applicable to the States through the Fourteenth Amendment. *Presbyterian Church* v. *Hull Church*, 393 U.S. at 447-448; *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. at 710-711.

Jones v. *Wolf*, 443 U.S. 595, 617 n. 4 (1979) (Powell, J., dissenting).

Id. at 119 (emphasis added).[7] The Court then addressed the issue of property disputes in the context of the compulsory deference rule for hierarchical churches:

> Ours is a government which by the "law of its being" allows no statute, state or national, that prohibits the free exercise of religion. There are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property. *Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls.* This under our Constitution necessarily follows *in order that there may be free exercise of religion.*

Id. at 120-121 (footnotes omitted) (emphasis added). Thus, "the church rule controls" property dispositions in hierarchical churches as a constitutional matter, where those decisions are based on church custom or law on ecclesiastical issues, as in this case.

In *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976), the Illinois Supreme Court had invalidated the hierarchical denomination's suspension and removal of a bishop as "arbitrary". This Court reversed and again articulated the compulsory deference rule.

> The fallacy fatal to the judgment of the Illinois Supreme Court is that it rests upon an *impermissible rejection of the decisions of the highest ecclesiastical tribunals* of this hierarchical church upon the issues in dispute, and *impermissibly substitutes its own inquiry into church polity* and resolutions based thereon of those disputes.

Id. at 708 (emphasis added). The Court held that civil courts may not review a church hierarchy's decision for "arbitrariness."

> We have concluded that whether or not there is room for "marginal court review" under the narrow rubrics of "fraud" or "collusion" when church tribunals act in bad faith for secular purposes, no "arbitrariness" exception—in the sense of an inquiry whether the decisions of the highest eccle-

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[7] "Thus, the Supreme Court has recognized for nearly a quarter-century that, whatever may be true of other private associations, religious organizations as spiritual bodies have rights which require distinct constitutional protection." L. Tribe, American Constitutional Law 876 (1978).

> siastical tribunal of a hierarchical church complied with church laws and regulations—is consistent with the constitutional mandate that *civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law.* . . . [R]ecognition of such an ["arbitrariness"] exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that *a civil court must accept the ecclesiastical decisions of church tribunals as it finds them.*

Id. at 713 (footnote omitted) (emphasis added). As in *Kedroff*, the hierarchical ruling at issue in *Serbian Orthodox Diocese* necessarily affected control of certain church property, but the Court held that "the civil courts *must* accept that consequence as *the incidental effect of an ecclesiastical determination that is not subject to judicial abrogation*, having been reached by the final church judicatory in which authority to make the decision resides." Id. at 720 (emphasis added).

2. "Neutral Principles" May Not Override Property Decisions of Hierarchical Churches.

The Court also disapproved the Illinois Supreme Court's attempted application of "*neutral principles*" in examining and invalidating the denomination's reorganization of the American-Canadian Diocese into three dioceses.

> [T]he reorganization of the Diocese involves a matter of internal *church government*, an issue *at the core of ecclesiastical affairs;* Arts. 57 and 64 of the Mother Church constitution commit such questions of church polity to the final province of the Holy Assembly. *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952), state that *religious freedom encompasses the "power [of religious bodies] to decide for themselves*, free from state interference, *matters of church government as well as those of faith and doctrine."*

Serbian Eastern Orthodox Diocese v. *Milivojevich*, 426 U.S. at 721-722 (emphasis added). Of course, this is not to say that the "neutral principles of law" approach never applies, but simply that it does not apply to a hierarchical church that has made an ecclesiastical decision.

While the Court has approved the use of other standards in some church property disputes, the Court most recently continued to require the application of the compulsory deference rule to church property disputes that involve *"issues of religious doctrine or polity."* *Jones* v. *Wolf*, 443 U.S. at 602 (emphasis added).[8] In *Jones* v. *Wolf*, the Court approved the "neutral principles of law" approach to resolving church property disputes *subject to the express limitation* that the compulsory deference rule must be applied where resolving the property dispute requires resolution of issues of religious doctrine or polity.[9]

> "[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 710 (1976); *Maryland & Va. Churches* v. *Sharpsburg Church*, 396 U.S. 367, 368 (1970); *Presbyterian Church I*, 393 U.S., at 449. As a corollary to this commandment, *the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. Serbian Orthodox Diocese*, 426 U.S., at 724-725; cf. *Watson* v. *Jones*, 13 Wall. 679, 733-34 (1872). *Subject to these limitations*, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, "a State may adopt any one of various approaches for settling church property disputes *so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." Maryland & Va. Churches*, 396 U.S., at 368 (BRENNAN, J., concurring) (emphasis in original).

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[8] "[O]nly the *Watson* v. *Jones* principles [i.e., compulsory deference] as modified by later case law are wholly compatible with the free exercise clause." Curtis, n. 1 *supra*, at 1138.

[9] The Court's approval of the "neutral principles of law" approach in some circumstances generated much scholarly commentary. *E.g.*, Adams and Hanlan, note 2 *supra*; Sirico, note 2 *supra*; Comment, *Church Property Disputes: The Trend and the Alternative*, note 2 *supra*; Note, *Church Property Disputes in the Age of "Common-Core Protestantism"*, note 2 *supra*.

The decision in Jones v. Wolf also generated some criticism. *E.g.*, Comment, *Church Property Dispute Resolution: An Expanded Role for Courts After Jones* v. *Wolf?*, note 2 *supra*. *See also Jones* v. *Wolf*, 443 U.S. at 610 (Powell, J., dissenting).

Id. (emphasis added), quoting *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969).[10] *See also Kedroff*, 344 U.S. at 120-121 ("Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls.") Roughly equal numbers of courts have applied the compulsory deference rule and the "neutral principles" approach to hierarchical denominations, and most have upheld the rights of the hierarchical denomination to disputed property.[11]

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[10] The decision in *Maryland & Virginia Eldership* has been criticized as allowing too much intervention by states into ecclesiastical issues. *See* Comment, *Church Property Disputes: The Trend and the Alternative*, n. 2 *supra* at 571.

[11] State court decisions upholding a hierarchical denomination's ownership of property against a local church under the compulsory deference rule include: *New York Annual Conference of the United Methodist Church* v. *Fisher*, 438 A.2d 62 (Conn. 1980); *Mills* v. *Baldwin*, 362 So.2d 2 (Fla. 1978); *Draskovich* v. *Pasalich*, 280 N.E.2d 69 (Ind. App. 1972); *Fonken* v. *Community Church of Kamrar*, 339 N.W.2d 810 (Iowa 1983); *Calvary Presbyterian Church* v. *Presbytery of Baltimore*, 39 Md. App. 405, 386 A.2d 357 (1978); *The Presbytery of Baltimore of the United Presbyterian Church* v. *Babcock Memorial Presbyterian Church*, 449 A.2d 1190 (Md. App. 1982); *Wheeler* v. *Roman Catholic Archdiocese of Boston*, 389 N.E.2d 966 (Mass. 1979); *Bennison* v. *Sharp*, 329 N.W.2d 466 (Mich. App. 1983); *Macedono-Bulgarian Orthodox Church* v. *Macedonian Patriotic Organization*, 21 Mich. App. 281, 175 N.W.2d 801 (1970); *The Protestant Episcopal Church in the Diocese of New Jersey* v. *Graves*, 83 N.J. 572, 417 A.2d 19 (1980); *The Protestant Episcopal Church in the Diocese of New Jersey* v. *Graves*, 161 N.J. Sup. 230, 391 A.2d 563 (1978); *Russian Church of Our Lady of Kazan* v. *Dunkel*, 67 Misc. 2d 1032, 326 N.Y.S.2d 727 (1971); *First Presbyterian Church of Schenectady* v. *United Presbyterian Church in the United States*, 92 A.D.2d 164, 461 N.Y.S.2d 903 (1983); *Wych* v. *Alexander*, 189 S.E.2d 608 (N.C. App. 1972); *Presbytery of Cimarron* v. *Westminster Presbyterian Church of Enid*, 515 P.2d 211 (1973); *Erie Conference Central Office* v. *Burdick*, 269 A.2d 735 (Pa. 1970); *Presbytery of Beaver-Butler* v. *Middlesex Presbyterian Church*, 471 A.2d 1271 (Pa. 1985); *Schismatic and Purported Casa Linda Presbyterian Church in America* v. *Grace Union Presbytery*, 710 S.W.2d 700 (Tex. App. 1986); *Original Glorious Church of God in Christ, Inc., of the Apostolic Faith* v. *Myers*, *367 S.E.2d 30 (W. Va. 1988)*; *First Presbyterian Church* v. *United Presbyterian Church in the United States*, 430 F. Supp. 450 (N.D.N.Y. 1977).

State court decisions upholding a hierarchical denomination's ownership of property against a local church under the "neutral principles of law" approach include: *African Methodist Episcopal Zion Church in America* v. *Zion Hill Methodist Church*, 534 So. 2d 224 (Ala. 1988); *The Bishop and Diocese of*

C. IN THIS CASE, THE OWNERSHIP OF THE PROPERTY IS A QUESTION OF "DOCTRINE OR POLITY," AND THE CHURCH OF GOD DENOMINATIONAL HIERARCHY'S DECISION VESTS TITLE TO THE PROPERTY IN THE HIERARCHICAL DENOMINATION.

1. The Church of God's Structure and Government Are Hierarchical (as the Ohio Court Found), as a Matter of Religious Belief.

The Church of God, Cleveland, Tennessee is a hierarchical denomination *as a matter of religious conviction* and not because of a mere policy choice or because of historical accident. As the denomination's governing document recites:

> Believing a centralized form of government to be *the Biblical standard for our churches*, the Church of God early adopted such a form of government and has consistently practiced a centralized form of government.

Minutes of the 62nd General Assembly of the Church of God ("*Minutes*"),[12] S59, ¶ 7 (emphasis added).[13] In the Church of God

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Colorado v. *Mote*, 716 P.2d 85 (Colo. 1986); *Carnes* v. *Smith*, 236 Ga. 30, 222 S.E.2d 322 (1976); *Crumbley* v. *Solomon*, 243 Ga. 343, 254 S.E.2d 330 (1979); *Hinkle Creek Friends Church* v. *Western Yearly Meeting of Friends Church*, 469 N.E.2d 40 (Ind. App. 1984); *United Methodist Church* v. *St. Louis Crossing Independent Methodist Church*, 276 N.E.2d 916 (Ind. App. 1971), *Fluker Community Church* v. *Hitchens*, 405 So. 2d 1223 (La. App. 1981); *Struemph* v. *McAuliffe*, 661 S.W.2d 559 (Mo. App. 1983); *Western Pennsylvania Conference of the United Methodist Church* v. *Everson Evangelical Church of North America*, 312 A.2d 35 (Pa. 1973); *Fairmount Presbyterian Church* v. *Presbytery of Holston*, 531 S.W.2d 301 (Tenn. App. 1975); *Norfolk Presbytery* v. *Bollinger*, 201 S.E.2d 752 (Va. 1974); *Brady* v. *Reiner*, 198 S.E.2d 812 (W. Va. 1972).

[12] The *Minutes* are not merely notes of an annual convention, but are the permanent ecclesiastical governing documents of the hierarchical denomination, and are supplied and available to all local congregations.

[13] In deposition, one witness for the denomination reiterated the religious basis for the denomination's organizational structure:

> Q. . . . And so it is fair to say that *the government and discipline within the Church of God as a whole is derived from the teachings within the New Testament?*
>
> A. *Yes.*
>
> . . . .
>
> Q. *And those teachings, again are derived upon doctrines taken from the New Testament?*
>
> A. *We feel they are.*

Deposition of Rev. F.W. Goff 45-46, 64-65.

denomination, the General Assembly is the "organized body with full power and authority to designate the teachings, principles, and practices of all the local churches composing said Assembly." *Id.*, S37, ¶2. The General Assembly "governs the operation of the Church of God at all structural levels: International, national, state, district and local," and "has vested in the office of the State Overseer [Bishop] authority over the local churches." *Id.* ¶3. As a consequence, *local churches are to abide by the General Assembly's decisions in all areas, including property ownership.*

> Local churches, when they have been accepted into the Church of God, are therefore bound by the decisions of the General Assembly *in matters of doctrine, teaching, and polity.*

Id. ¶5 (emphasis added).

2. The Church of God's Hierarchical Tenets Include Hierarchical Ownership of Church Property.

The denomination's polity regarding property ownership directly reflects the religious conviction that a centralized (hierarchical) form of government is Biblically mandated. The Board of Trustees of a local church holds title to real estate owned by the local congregation, "*provided that all such property shall be used, managed and controlled for the sole and exclusive use and benefit of the Church of God, Cleveland, Tennessee, U.S.A.*" *Id.* ¶4 (emphasis added). In the event of a local church schism, the denomination retains the property; only the Trustees are changed. Id.

The governing Minutes explicitly provide that "[a]*ny property* held by any of these boards [General, State, or Local] *is the property of the Church of God* and shall be managed and controlled exclusively for the use and benefit of the Church of God." *Id.*, S22, Art. IV, ¶A (emphasis added). State Overseers (Bishops) must approve the selection, purchase, and construction of all church properties. *Id.*, S24, Art. VI, ¶4. To protect its interest in local churches' property, the denomination even specifies the deed form to be used by local churches in purchasing real estate and requires that all deeds on new property are to be submitted to the State Overseer (Bishop) for approval before they are recorded. *Id.*, S45, Art. II. In addition, the Local Board of Trustees may not buy or sell property without the attendance of the State Overseer (Bishop) at the congregation's vote approving

the action or without the State Overseer's (Bishop's) certification "that the proposition is not adverse to the interest of the Church of God. *Id.*, S46, ¶ 3.[14]

The governing *Minutes* require that applicants for membership publicly agree that they are "willing to abide by and subscribe to the discipline of the Church of God as outlined by the Scripture and set forth in the *Minutes* of the General Assembly." *Id.*, S38, ¶ 6. Thus, the *Minutes* make explicit the consent rationale articulated by this Court in *Watson* v. *Jones*, 80 U.S. at 729: "All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it."[15]

In summary, *the ownership and control of the property at issue in this case is an issue "of religious doctrine or polity" for the Church of God.*[16] It is an issue on which the civil courts must accept the General Assembly's judicial decision[17] under the compulsory deference rule articulated in *Watson* v. *Jones*, 80 U.S. at 727 ("questions of discipline, or of faith, or ecclesiastical rule, custom, or law"); *Kedroff*, 344 U.S. at 120-121 ("church custom or law on ecclesiastical issues"); *Serbian Eastern Orthodox Diocese*, 426 U.S. at 708, 713, 721-22 ("church polity"; "matters of discipline, faith, internal organization, or ecclesiastical rule custom, or law"; "matters of church government as well as those of faith and doctrine"); and *Jones* v. *Wolf*, 443 U.S. at 602 ("doctrine or polity").[18] Fairborn Church of God's actions not only defied the

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[14] Here, Fairborn Church of God knew of these requirements and deliberately did not comply with them, as the Ohio Court of Appeals found. *Fairborn Church of God*, No. 88 CA 71, slip op. at 23.

[15] As a result of this express consent upon joining the denomination, "[i]n a hierarchical church, the 'whole body' speaks through the highest church authority." Curtis, n. 1 *supra*, at 1117.

[16] As Justice Frankfurter recognized, the property in question "is not just a piece of real estate. . . . What is at stake here is the power to exert religious authority." Kedroff, 344 U.S. at 121 (Frankfurter, J., concurring).

[17] The General Assembly is the highest authority in the Church of God, *Minutes*, S37, ¶¶ 2-3, and is a judicial body. *Id.*, S1, Art. III(1) ("After due consideration the Assembly adopted the following: We do not consider ourselves a legislative or executive body, but judicial only.")

[18] Other state courts have applied the compulsory deference rule to property disputes involving the Church of God, Cleveland, Tennessee and have *upheld* the denomination's ownership. *See Polen* v. *Cox*, 267 A.2d 201 (Ct. App. Md. 1970); *Church of God of Madison* v. *Noel*, 318 S.E.2d 920 (W. Va. 1984).

procedures established by the denomination, but also violated the denomination's understanding and expression of church doctrine and polity—doctrine and polity that are rooted in the denomination's interpretation of the New Testament.

3. The Ohio Courts Contradicted and Confused This Court's Church Property Rulings.

The Ohio court wrongly failed to defer to the hierarchical denomination's authoritative resolution of this doctrinal issue,[19] and thereby violated the free exercise rights of the denomination and of its members.[20] Contrary to the First Amendment and this Court's decisions, the Ohio court "passe[d] control of matters strictly ecclesiastical from one church authority to another," *Kedroff*, 344 U.S. at 119, "intrude[d] for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom," *id.*, "directly prohibit[ed] the free exercise of an ecclesiastical right," id., and "impermissibl[y] reject[ed] . . . the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitute[d] its own inquiry into church polity." *Serbian Eastern Orthodox Diocese*, 426 U.S. at 708.[21]

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[19] If a local church affiliates with and uses the name of a larger church organization, the local members should reasonably expect to follow the doctrine and policy of the larger group. Courts should not intercede to support one side where parties have previously agreed that the general church would be authoritative. The propriety of the hierarchical form of church government is a question, not for the civil courts, but for laymen and clergymen to decide within the church.

Note, *Church Property—Mississippi Statutes Which Authorized Civil Courts To Resolve Internal Church Property Disputes Are Declared Unconstitutional*, 43 Miss. L.J. 722, 727 (1972).

[20] *See* Giannella, *Religious Liberty, Nonestablishment, and Doctrinal Development: Part II. The Nonestablishment Principle*, 81 Harv. L. Rev. 513, 536 (1968): "Failure to give legal effect to church regulations governing internal relationships would interfere with the religious pursuits of those persons who seek to find spiritual fulfillment through certain ecclesiastical structures."

[21] Any reluctance by the Ohio court to defer to the Church of God's decision regarding the property would be based on an "extreme disestablishment position" that results from a "discriminatory and impractical . . . reading of the establishment clause." Curtis, n. 1 *supra*, at 1136.

II. THE RELIGION CLAUSES AND THIS COURT'S CHURCH PROPERTY DISPUTE CASES CONFLICT WITH THE OHIO COURT'S REFUSAL TO CONSIDER AND FOLLOW HIERARCHICAL CHURCH CANONS FOR PROPERTY OWNERSHIP IN JUDICIALLY APPLYING NEUTRAL PRINCIPLES OF LAW (IF NEUTRAL PRINCIPLES RATHER THAN COMPULSORY DEFERENCE IS THE APPLICABLE TEST).

AS A RESULT, THE PROPERTY AWARD TO THE LOCAL CHURCH VIOLATES THE HIERARCHICAL DENOMINATION'S FREE EXERCISE OF RELIGION BY NULLIFYING ITS ECCLESIASTICAL DECISION, AND IMPERMISSIBLY ENTANGLES SECULAR COURTS IN THE HIERARCHICAL DENOMINATION'S DETERMINATION OF CHURCH MATTERS.

A. THIS HIERARCHICAL DENOMINATION HAS EXPRESS CANONS GOVERNING PROPERTY OWNERSHIP, WHICH WERE NEITHER CITED NOR FOLLOWED BY THE LOWER COURTS, AND WHICH EXPRESSLY AND UNAMBIGUOUSLY VEST TITLE IN THE DENOMINATIONAL HIERARCHY RATHER THAN IN THE LOCAL CHURCH.

1. Express Canons Vest Property in the Hierarchical Denomination.

There are numerous denominational canons vesting title to local church property in the hierarchical denomination. An express canon provides that a local congregation's property is owned by the denominational hierarchy:

> S37. RELATIONSHIP OF THE LOCAL CHURCH TO THE GENERAL ASSEMBLY (58th A., 1980, pp. 38, 39[9])
>
> . . . .
>
> 3. The General Assembly governs the operation of the Church of God at all structural levels: International, national, state, district and local. The General Assembly has vested in the office of the State Overseer [Bishop] authority over the local churches. Some of his powers, all of which are more fully explained elsewhere in the *Minutes*, can be exercised to remove pastors, to appoint pastors, *to declare the offices of the local trustees vacant and to appoint a special Board of Trustees*, which may be the State Board, *to hold title to such local property.*
>
> 4. A local Board of Trustees shall hold title to, manage, and control pursuant to the direction of the local congregation all

real estate owned by the local congregation by which they are selected *provided that all such property shall be used, managed and controlled for the sole and exclusive use and benefit of the Church of God, Cleveland, Tennessee, U.S.A.* In the event that the majority or all of the local church depart from the faith or discontinue fellowship with the organization, the State Overseer [Bishop] shall at any time have power to appoint other trustees *to hold the property for the Church of God.*

There is also a further canon on church property control by the hierarchy:

S45. CHURCH PROPERTY
I. LOCATION AND PLANS
Location and plans for new church buildings and parsonages are *to be submitted to and approved by the State and District Overseer [Bishop]* in their respective territories (35th A., 1940, p. 30).
II. DEED
1. Our *adopted deed form is to be used* in purchasing real estate for church property, except in states that require using their own deed form. In this event *the essential clauses of our uniform deed are to be inserted* (31st A., 1936, p. 32).
2. *All deeds* on new local church property *are to be submitted to the state office for approval before they are recorded* in their respective counties (46th A., 1956, p. 24).

2. Express Canons Subject Local Congregations to the Hierarchy.

Another canon involves the unitary identity of the local congregation and the denominational hierarchy:

S38. MEMBERS
(45th A., 1954, p. 27; 61st A., 1986, p. 54(4).)
. . . .
III. LOCAL CHURCH PART OF THE ASSEMBLY
1. The local churches, the names of which are recorded are the result of faithful services of the ministers and representatives of the General Assembly, and these churches, when thus received by the representatives of the General Assembly, then became and composed a part of the General Assembly. Therefore, *the right of any local church as a whole to withdraw from the General Assembly is not recognized and does not exist,* but those members who prove disloyal to the government and teachings as promulgated from time to time by the General Assembly, or who are otherwise disorderly

are to be dealt with as individuals (15th A., 1920, p. 50; 45th A., 1954, pp. 27, 28; 50th A., 1964, p. 54).

Further, local boards of trustees are subject to and removable by the State Overseer (Bishop):

S46. LOCAL BOARD OF TRUSTEES

. . . .

2. Members of the Local Board of Trustees shall hold office until their successors are appointed. The Local Board of Trustees shall hold title to, manage, and control, pursuant to the direction of the local congregation, all real estate owned by the local congregation by which they are selected, *provided that all such property shall be used, managed, and controlled for the sole and exclusive use and benefit of the Church of God.*

3. The said Local Board of Trustees shall have full right, power, and authority to buy property for the use or benefit of the local congregation; sell, hypothecate, exchange, transfer and convey any of the local property held by it or to borrow money and pledge the said property for the repayment of the same and to execute all necessary deeds, conveyances, etc., *provided that the proposition shall first be presented to a* regular or called *conference* of the local church *presided over by the State Overseer [Bishop]*, or one whom he may appoint, and approved by a two-thirds majority vote *and provided further that the Board have a certification from the State Overseer [Bishop]*, or one whom he may appoint, *that the proposition is not adverse to the interest of the Church of God* (53d A., 1970, pp. 46, 47(16)).

4. If any local church shall cease to function or exist, then the *Local Board of Trustees shall hold the local property as trustees for the Church of God generally* in the state where located, *and said local board shall convey the local property to the state board*, to be used and disposed of by it for the use and benefit of the church in that state generally; or said state board may use the said property, or the proceeds derived from the sale of the same for the founding of another church in the state, or the promotion of one already existing.

5. If the Local Board of Trustees has ceased to exist or to perform its duties, then *the State Overseer [Bishop] shall have the right to declare all offices thereon vacant and to appoint a special Board of successor Trustees*, which may be the State Board of Trustees for that State, *who shall thereupon automatically hold title.*

6. Furthermore, in the event of dissension within a local church of the Church of God, *the State Overseer [Bishop]* of the Church of God for the state in which such local church is

> located *shall have power to declare the offices on the Local Board of Trustees vacant and to appoint a special Board of Trustees*, which may be the State Board of Trustees, as successors to the Local Board of Trustees, *and such special Board* so appointed shall *automatically then hold title to such local property* (53d A., 1970, pp. 46, 47(16)).

See also id., S24 (State Overseers [Bishops]), Art. VI (Duties and Authorities), ¶4 ("To approve the selection, purchase, and construction of all church, parsonage, or Sunday School properties, together with the respective district overseers [bishops].").

Thus, there is no question that the denomination's governing documents vest title to local church property in the denomination.[22] The Ohio court erred, however, in refusing to examine the above documents, as well as in refusing to follow their resolution of the property dispute.

B. THE FIRST AMENDMENT AND THIS COURT'S DECISIONS REQUIRE ANY APPLICATION OF NEUTRAL PRINCIPLES OF LAW TO INCLUDE CONSIDERATION OF AND DEFERENCE TO A HIERARCHICAL DENOMINATION'S CANONS REGARDING CHURCH PROPERTY OWNERSHIP WHERE THE HIERARCHICAL DENOMINATION HAS APPLICABLE CANONS.

1. The "Neutral Principles of Law" Approach to Resolving Property Disputes Does Not Preclude Review of Religious Documents.

The Ohio courts seriously misread this Court's decisions to preclude review of critically relevant portions of the denomination's governing documents because those documents are admit-

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[22] "[W]hat should be crucial in disputes over church property [is] which body within the church has the right to prescribe beneficial use." Curtis, note 2 *supra*, at 1121. To elaborate:

> Actual title is usually relatively unimportant to a church; ownership may consist of many separate interests. The property rights which are significant are *the rights of appointment of hierarchy and clergy* to given benefices, *the right to determine membership* in the congregation, and *the right to administer the church finances and prescribe discipline*. It is unprofitable to characterize "ownership" or "title" as the grail for which the courts are to search. *"Control," "power to adjudicate,"* or *"power to prescribe use"* seem more useful ways of saying the same thing.

Id. at 1133 (emphasis added). The foregoing review of the denomination's governing documents establishes that the Church of God denomination, and not the local congregation, has all the significant property rights, including the right to prescribe the beneficial use of the property in question.

tedly religious. They effectively penalized the Church of God for having a firm religious basis for its hierarchical polity and church property structure, and discriminated against the hierarchy. The Common Pleas Court, relying on language in a decision of the Ohio Supreme Court, limited its review to "secular documents"—Fairborn Church of God's initial and amended articles of incorporation[23] and the chain of title for the property. *Southern Ohio State Executive Offices of Church of God v. Fairborn Church of God*, No. 87 CV 392, slip op. at 5-6 (Common Pleas Ct. of Greene Cty., Ohio, Sept. 9, 1988), citing *Serbian Orthodox Church* v. *Keleman*, 21 Ohio St. 2d 154, 162, 256 N.E.2d 212, *cert. denied*, 400 U.S. 827 (1970). According to the Common Pleas Court, "[l]imiting the inquiry to the secular documents previously stated . . . avoids infractions upon First Amendment religious freedoms." Slip op. at 6.

The Ohio Court of Appeals adopted a similar approach, holding that, while the *Minutes* and the *Church of God Polity* documents cited by the denomination need not be wholly excluded from the court's consideration, the court must limit its review to "passages of a *secular* nature that bear on the property dispute." *Fairborn Church of God*, No. 88 CA 71, slip op. at 19 (emphasis added), citing *Jones* v. *Wolf*, 61 L. Ed. 2d at 785. Accordingly, the court included within its consideration *only one* of the numerous passages from the *Minutes* quoted in Section II(A) above. Id. at 18.[24]

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[23] Fairborn Church of God's initial Articles of Incorporation in 1963 stated that the purpose of the corporation was to "form and become the Fairborn Church of God *under and in accordance with the General Assembly of the Church of God* and to do all things not prohibited by law, and which are *in accordance with the teachings of the General Assembly of the Church of God.*" *Southern Ohio State Executive Offices of Church of God v. Fairborn Church of God*, No. 87 CV 392, slip op. at 5 (Common Pleas Ct. of Greene Cty., Ohio, Sept. 9, 1988). The articles were amended on April 8, 1987, obviously in anticipation of a dispute with the denomination, to state that the purpose of the corporation was to "form and become the Fairborn Church of God, and to do all things not prohibited by law." *Id.* Respondents cannot defeat Petitioners' property rights by merely restating the local church's articles of incorporation. *See Fonken* v. *Community Church of Kamrar*, 339 N.W.2d 810, 817 (Iowa 1983).

[24] A local Board of Trustees shall hold title to manage and control pursuant to the direction of the local congregation all real estate owned by the local congregation by which they are selected provided that all such property shall be used, managed and controlled for the sole and

By ignoring the remaining relevant passages from the *Minutes*, and *only* by doing so, the court was able to conclude that the terms of the denomination's documents were not sufficient to create an express trust favoring the denomination. *Id.* at 21.

Contrary to the Ohio courts' misreading, this Court has *never* precluded review of religious documents that bear on a church property dispute, so long as those documents may be reviewed in secular terms and do not require the resolution of any doctrinal issues. In fact, *this Court has affirmatively encouraged hierarchical denominations to incorporate into their governing documents language that explicitly vests property rights in the denomination*, in order to avoid litigating property disputes. Ironically, in this case, where the Church of God's governing documents vest ownership in the denomination as explicitly as possible, the Ohio court refused to examine those documents.

The "neutral principles of law" approach to church property disputes approved by this Court in *Jones* v. *Wolf* explicitly contemplates the need to examine "religious documents" such as church constitutions, as the Ohio court recognized. *Fairborn Church of God*, No. 88 CA 71, slip op. at 19.

> The neutral-principles method . . . *requires a civil court to examine certain religious documents, such as a church constitution*, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust.

443 U.S. at 604 (emphasis added).

Nor has this Court ever *practiced* such segregation of favored "secular" church documents from suppressed "religious" church documents. While cautioning that church documents should be examined "in secular terms," this Court similarly has never required that "secular" and "religious" portions of the same document be segregated. In *Jones* v. *Wolf*, the Court approved the Georgia Supreme Court's examination of the *Book of Church Order* of the Presbyterian Church in the United States ("PCUS").

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exclusive use and benefit of the Church of God, Cleveland, Tennessee, U.S.A.

Minutes, S38, ¶ 4.

The Court also noted approvingly in that case that the Georgia Supreme Court had examined the *Book of Church Order* of the PCUS, on remand from the United States Supreme Court, in *Presbyterian Church* v. *Eastern Heights Church*, 225 Ga. 259, 167 S.E.2d 658 (1969), and had examined the United Methodist Church's *Book of Discipline* in *Carnes* v. *Smith*, 236 Ga. 30, 222 S.E.2d 322, *cert. denied*, 429 U.S. 868 (1976).[25] Similarly, in *Maryland & Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970), the Court approved the Maryland Court of Appeals' examination of the constitution of the General Eldership of a different Church of God denomination concerning the ownership and control of church property.[26] In *Serbian Orthodox Diocese*, this Court examined and cited the constitutions of the denomination and the Diocese, resolutions of the Diocese, and the Episcopal-Hierarchical Oath sworn by newly elevated Bishops, which were pervasively religious. 426 U.S. at 715-716 & n. 9; *id.* at 721-23 & nn. 12-14.[27]

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[25] The Book of Discipline of the United Methodist Church provided as follows:

> [T]itle to all real property now owned or hereafter acquired by an unincorporated local church . . . shall be held by and/or conveyed and transferred to its duly elected trustees . . . and their successors in office . . . in trust, nevertheless, for the use and benefit of such local church *and of The United Methodist Church*. Every instrument of conveyance of real estate shall contain the appropriate trust clause as set forth in the Discipline (¶ 1503).

Id. ¶ 1537 (emphasis supplied), quoted in *Jones* v. *Wolf*, 443 U.S. at 600 n. 2. On the basis of the above language, the property at issue in *Carnes* v. *Smith* was awarded to the denomination. The same result should follow here, where the Church of God *Minutes* are replete with essentially identical language.

[26] The Ohio court's dichotomized approach to the relevant documents is also contrary to the practice of the courts of other states in property dispute cases involving the Church of God, Cleveland, Tennessee. Those courts have freely examined the *Minutes* of the Church of God in determining property ownership. *See Kelley* v. *Riverside Boulevard Independent Church of God*, 44 Ill. App. 3d 673, 3 Ill. Dec. 298, 358 N.E.2d 696 (1976) (remanding for further fact-finding); *Polen* v. *Cox*, 267 A.2d 201 (Ct. App. Md. 1970) (judgment for Church of God denomination); *Church of God of Madison* v. *Noel*, 318 S.E.2d 920 (W. Va. 1984) (judgment for Church of God denomination).

[27] The Episcopal-Hierarchical Oath provided:

> Should I transgress against whatever I promised here, or should I be disobedient to the Divine Ordinances and Order of the Eastern Orthodox Church, or to the Most Holy Assembly (of Bishops) I, personally, will become a schismatic and should I make the Diocese entrusted to

Thus, it is nowhere required that the civil court segregate the "religious" portions of church documents from the "secular" portions and then consider only the "secular" portions, as the Ohio court attempted to do.[28] To do so would discriminate against hierarchies and would manifest hostility toward religion.

2. If the Denomination's Religious Documents Cannot Be Analyzed "in Secular Terms," the Courts Must Defer to the Denomination's Interpretation of Those Documents.

In concluding that the "neutral principles of law" approach does require civil courts to examine church documents but that the courts must segregate "secular" portions of those documents from "religious" portions, the Ohio court quoted the following passage from *Jones* v. *Wolf:*

> In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties intended to create a trust.

443 U.S. at 604, quoted in *Fairborn Church of God*, No. 88 CA 71, slip op. at 19. Significantly, the Ohio court *failed to quote* the next two sentences from *Jones* v. *Wolf,* which specifically address the case in which church documents incorporate religious concepts to such an extent that civil courts must *defer* to authoritative ecclesiastical decisions.

> In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, *then the court must defer to the resolution of the doctrinal issue by the authoritative*

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me in any manner to become disobedient to the Most Holy Assembly (of Bishops), may I, in that case, be defrocked of my rank and divested of the (episcopal) authority without any excuse or gainsay, and (may I) become an alien to the heavenly gift which is being given unto me by the Holy Spirit through the Consecration of the Laying of Hands.

426 U.S. at 716 n. 9.

[28] Such a dichotomy will often, if not in every case, be impossible in any event. It will normally be the case that "[i]ssues of doctrine and polity pervade the provisions of a denomination's governing documents." *Jones* v. *Wolf,* 443 U.S. at 609 n. 7.

> *ecclesiastical body. Serbian Orthodox Diocese*, 426 U.S., at 709.

443 U.S. at 604.

Petitioners suggest that the provisions of the Minutes quoted in Section II(A) are "so express that the civil courts could enforce them without engaging in a searching and therefore impermissible inquiry into church polity." *Serbian Orthodox Diocese*, 426 U.S. at 723. Should that not be the case, however, and should the First Amendment forbid review by the civil courts because the review cannot be conducted in "purely secular terms," *Jones* v. *Wolf*, 443 U.S. at 604, *the only proper result under this Court's decisions is for the civil courts to "defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body," id.* In this case, deference would be to the General Assembly of the Church of God.

3. The Hierarchical Denomination's Governing Documents Contain the Language Recommended by This Court, and the Ohio Court Erred in Refusing To Give Effect to that Language.

"[F]lexibility in ordering private rights and obligations to reflect the intentions of the parties" was one of the primary advantages of the "neutral principles of law" approach identified by this Court in *Jones* v. *Wolf*, 443 U.S. at 603. The most important practical application of that flexibility was to be the ability of "States, religious organizations, and individuals [to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." Id. at 604, quoting *Presbyterian Church in the United States*, 393 U.S. at 449. The Court explicitly encouraged hierarchical denominations to obviate property disputes by modifying their governing documents accordingly:

> Through appropriate reversionary clauses and trust provisions, *religious societies can specify* what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.
>
> . . . .

> . . . At any time before the dispute erupts, *the parties can ensure*, if they so desire, *that the faction loyal to the hierarchical church will retain the church property.* They can modify the deed or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, *the constitution of the general church can be made to recite an express trust in favor of the denominational church.* The burden involved in taking such steps will be minimal. And *the civil courts will be bound to give effect to the result indicated by the parties*, provided it is embodied in some legally cognizable form.

Jones v. *Wolf*, 443 U.S. at 603-04, 606 (emphasis added). *See also id.* at 608 (state rule of majority representation may be overcome by providing in "the *constitution of the general church* . . . that the church property is held in trust for the general church and those who remain loyal to it").

Language of denominational ownership in a denomination's governing documents is a conclusive expression of the parties' intent because members of a denomination have consented to the denomination's rules regarding property ownership.

> All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed.

Watson v. *Jones*, 80 U.S. at 728-29. Here, members of the denomination, including those who attend the Fairborn Church of God, *expressly consented* to the denomination's property ownership rules by affirming upon becoming members that they were "willing to abide by and subscribe to the discipline of the Church of God as outlined by the Scripture and set forth in the *Minutes* of the General Assembly." *Minutes*, S37, I, ¶6.[29]

The Church of God, Cleveland, Tennessee, in accordance with this Court's instruction, expressly and repeatedly provided in its governing documents that "all real estate owned by the local congregation . . . shall be used, managed and controlled *for the*

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[29] This affirmation follows special membership classes or counseling sessions in which prospective members "are fully informed of the doctrine, teachings, government, and heritage of the Church of God." *Id.* ¶1.

sole and exclusive use and benefit of the Church of God, Cleveland, Tennessee, U.S.A." and that even if all of the members making up a local church discontinued fellowship with the denomination, the State Overseer (Bishop) would simply appoint new trustees "to hold the property *for the Church of God*." *Minutes*, S37, ¶4 (emphasis added).[30] *See also id.*, S46, ¶¶2-6.

Nevertheless, contrary to this Court's decisions and the First Amendment, the Ohio courts refused to give effect to the hierarchical denomination's canons on point, and therefore should be reversed.[31] Otherwise, the Ohio courts have begun a line of precedent for "pick-and-choose principles of law."

III. THE RELIGION CLAUSES AND THIS COURT'S CHURCH PROPERTY DISPUTE CASES CONFLICT WITH THE OHIO COURT'S REFUSAL TO RECOGNIZE THE CONSTRUCTIVE TRUST THAT THE HIERARCHICAL DENOMINATION'S CANONS CREATE AND THAT OHIO LAW ALLOWS. AS A RESULT, THE PROPERTY AWARD TO THE LOCAL CHURCH VIOLATES THE HIERARCHICAL DENOMINATION'S FREE EXERCISE OF RELIGION BY NULLIFYING ITS ECCLESIASTICAL DETERMINATION, AND IMPERMISSIBLY ENTANGLES SECULAR COURTS IN

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[30] There is no merit to Respondents' argument below that, because the title documents for the property in question name only the Trustees of the Fairborn Church of God as owners, the denomination can assert no legal claim. As this Court noted in *Watson* v. *Jones*, 80 U.S. at 720, "The trustees obviously hold possession for the use of the persons who by the constitution, usages, and laws of the [denomination], are entitled to that use." In fact, the Church of God *Minutes* provide precisely that. *E.g.*, S37, ¶4.

Moreover, the "formal title" doctrine urged by Respondents is flawed for several other reasons. First, it "places so much power in the hands of the titleholder that it is an *invitation to anarchy within the church government*" and "involves a refusal to enforce firmly established equitable principles." Curtis, n. 2 *supra*, at 1131 (emphasis added). Second, if enforced by the state, the "formal title" doctrine would be an unconstitutional "state establishment of a power structure within the religious government . . . analogous to a state's imposition of a certain form of prayer on people of all faiths." *Id.* at 1132.

[31] The one other state court that has applied the "neutral principles of law" approach to a property dispute involving the Church of God, Cleveland, Tennessee *upheld* the denomination's ownership. *Sustar* v. *Williams*, 263 So. 2d 537 (Miss. 1972).

THE HIERARCHICAL DENOMINATION'S DETERMINATION OF CHURCH MATTERS.

A. THE HIERARCHICAL DENOMINATION'S CANONS, WHICH CLEARLY PLACE CHURCH PROPERTY OWNERSHIP IN THE DENOMINATIONAL HIERARCHY RATHER THAN IN THE LOCAL CHURCH, REQUIRE A CONSTRUCTIVE TRUST IF PROPERTY IS FRAUDULENTLY DEEDED BY A LOCAL CHURCH WITHOUT DENOMINATIONAL-REQUIRED LANGUAGE OF TITLE, AND THE OHIO COURT ACKNOWLEDGED THE REQUIRED DEED LANGUAGE ABOUT HIERARCHICAL DENOMINATION OWNERSHIP AND THE LOCAL CHURCH'S KNOWLEDGE OF THAT REQUIREMENT.

1. Hierarchical Canons Place Property Ownership in the Denomination.

The *Minutes* of the General Assembly expressly require that the denomination's uniform deed be used in all real estate transactions by local churches:

> Our adopted deed form is to be used in purchasing real estate for church property, except in states that require using their own deed form. In this event the essential clauses of our uniform deed are to be inserted (31st A., 1936, p. 32).
>
> All deeds on new local church property are to be submitted to the state office for approval before they are recorded in their respective counties (46th A., 1956, p. 24).

Minutes, S45, Art. II, ¶ 1-2. In addition, the *Minutes* require that any property transactions be approved by the State Overseer (Bishop).

> The said Local Board of Trustees shall have full right, power, and authority to buy property for the use or benefit of the local congregation; sell, hypothecate, exchange, transfer and convey any of the local property held by it or to borrow money and pledge the said property for the repayment of the same and to execute all necessary deeds, conveyances, etc., *provided that the proposition shall first be presented to a regular or called conference* of the local church *presided over by the State Overseer [Bishop]*, or one whom he may appoint, and approved by a two-thirds majority vote *and provided further that the Board have a certification from the State Overseer [Bishop]*, or one whom he may appoint, *that the proposition is not adverse to the interest of the Church of God* (53d A., 1970, pp. 46, 47(16)).

Id. S46, ¶3.

2. The Local Unit Was "Fully Aware" of the Property Provisions, and Its Actions Gave "Strong Reasons" for Imposing a Constructive Trust.

Respondents were "fully aware of the policies adopted by the General Assembly of the Church of God concerning property ownership matters," as the Ohio court found. *Fairborn Church of God*, No. 88 CA 71, slip op. at 23 (emphasis added). Nevertheless, Respondents deliberately failed to use the required deed form or its language[32] and failed to secure the approval of the State Overseer (Bishop) for any of their real estate transactions,[33] in a clear (but futile) attempt to avoid denominational ownership of the local church property.

Respondents' actions, at the very least, trigger the imposition of a constructive trust under Ohio law.

3. Ohio Law Authorizes Constructive Trusts in Such Circumstances.

Indeed, the Ohio court agreed that Respondents' actions provided "strong reasons to find that the Fairborn Church, in its corporate body, holds title to the real property in question in constructive trust for Plaintiff-Appellants and the Church of God, Cleveland, Tennessee."[34]

As the Ohio court stated:

> Ohio has recognized the doctrine of "constructive trust", and has applied it to real property transactions.

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[32] Respondents did use the required deed language in one transaction in 1951. *Fairborn Church of God*, No. 88 CA 71, slip op. at 21. However, illustrating the lengths to which Respondents were willing to go to circumvent the denomination's polity, the property that was the subject of the 1951 deed to the trustees of the Fairborn Church's predecessor was in turn deeded by those trustees to the corporation in 1964, *without* the required language of trust in favor of the denomination. (That particular parcel was deeded to a church of another denomination in 1966). Defendants' Responses to Plaintiffs' Request for Admissions ¶¶ uu, vv, xx.

[33] Including two conveyances to the church *from the pastor*, Respondent Carter, and his wife. *Id.* ¶ rr.

[34] *Fairborn Church of God*, No. 88 CA 71, slip op. at 23. However, the court declined to impose a constructive trust for the erroneous reason discussed in Section III(B).

> "A constructive trust is a fiction of equity, devised to the end that the equitable remedies available against a conventional fiduciary may be available under the same name and processes against one who through fraud or mistake or any means ex maleficio acquires property of another. *Pearl-Market Bank & Trust Co.* v. *Edward D. Woodward Co.*, 22 Abs 328 (App. 1935).
>
> "Whenever one person is placed in a relation to another, by the act or consent of that other, or the act of a third person, or of the law, so that he becomes interested for him or with him, in any subject of property or business, he will in equity be prohibited from acquiring rights in that subject which are antagonistic to the person with who [sic] interest he has been associated. *Shaw* v. *Perry*, 95 NE2d 585, 58 Abs 112 (App. 1949)."

Id. at 22, quoting 3 McDermott, *Ohio Real Property Law and Practice*, § 27-14A at 352. The court went on to note that "constructive trusts have been found in cases in which no fraud is involved." *Fairborn Church of God*, No. 88 CA 71, slip op. at 22.

In this case, a constructive trust should be imposed because Respondents have acquired or assert formal title to property that rightfully belongs to Petitioners, and have done so through "means ex maleficio"—deliberate failure to abide by the denomination's requirements for local church property ownership. By becoming members of the Church of God, individually and corporately, Respondents were placed in a relation to the denomination to become interested with the denomination in the property in question. Now, Respondents have acquired or attempted to acquire rights in that property that are antagonistic to the denomination.

B. THE OHIO COURT VIOLATED THE FIRST AMENDMENT BY DENYING A CONSTRUCTIVE TRUST, FOR WHICH OHIO LAW PROVIDES, FOR THE SOLE STATED REASON THAT THE LOCAL CHURCH HAD NOT RECEIVED ANY BENEFIT FROM THE HIERARCHICAL DENOMINATION, WHICH WAS AN IMPERMISSIBLE ASSUMPTION.

The sole reason given by the Ohio courts for not imposing a constructive trust for the benefit of Petitioners was that the monies for the purchase of the property did not come from the denomination but from the congregation of the Fairborn

Church.[35] This assumption is possible only if the governing documents of the denomination are ignored, contrary to the First Amendment and this Court's decisions.

1. **Contributions to and Property of the Local Unit Are Contributions to and Property of the Hierarchical Denomination.**

The *Minutes* of the Church of God make it clear that local churches are neither conceptually nor doctrinally distinct entities from the denomination:

> The Church of God has a centralized form of church government. *The local churches*, the names of which are recorded, *are the results of the faithful services* of the ministers and representatives *of the General Assembly; and these churches*, when thus received by the representatives of the General Assembly, then *become and compose constituents of the General Assembly. Therefore, the right of any local church as a whole to withdraw from the General Assembly is not recognized and does not exist*, but those members who prove disloyal to the government and teachings as promulgated from time to time by the General Assembly or who are otherwise disorderly are to be dealt with as individuals.

S37, ¶ 1. *See also id.*, S38, Art. III, ¶ 1. Thus, unless the *Minutes* are ignored, it is a complete misnomer to speak of the local congregation and not the denomination as the source of monies used to purchase property, because the local congregation and the General Assembly of the denomination *are doctrinally one entity* (so much so that it is not possible for a local congregation to withdraw from the General Assembly, but only for individuals to do so; i.e., the General Assembly cannot withdraw from itself). To reach the conclusion it did, the Ohio court again ignored the hierarchical denomination's governing documents in contravention of the First Amendment, and should therefore be reversed.

2. **The Local Unit Would Be Unjustly Enriched If a Constructive Trust Is Not Imposed.**

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[35] *Contra Kelley* v. *Riverside Boulevard Independent Church of God*, 44 Ill. App. 3d 673, 3 Ill. Dec. 298, 358 N.E.2d 696, 706 (1976): "The mere fact that the local church provided the money [to purchase the property in question] is irrelevant if the local church is part of a hierarchical parent organization."

Moreover, the denomination did contribute to the local congregation, and Respondents would be unjustly enriched if a constructive trust is not imposed. First, for many years, all of the services and resources of the national denomination were available to and utilized by the Fairborn Church (for example, participation in the denominational clergy pension plan, use of denominational property for camps and meetings, and the opportunity to request and receive help and advice from the State Overseer (Bishop)), and the local congregation without doubt benefited materially from its association with the denomination and its use of the denomination's name.[36]

Second, Respondents clearly will be unjustly enriched to the extent they are permitted unilaterally to enter any real estate transactions concerning the existing property or are permitted to prevent the denomination from treating the property as rightfully its own. All contributors to all local units of the denomination have relied on the fact that they and all other contributors were building up a common denomination. Respondents essentially have deprived the denomination of an amount equal to the full market value of the property if they are permitted to ignore the denomination's ownership interest in the property, and should be held subject to a constructive trust for the benefit of the denomination.

CONCLUSION

With the Ohio court's decision, "the dead hand" of the law "fell with a resounding slap upon the living body" of the Church of God.[37] The Church of God hierarchy is entitled to have its church property restored to it, under compulsory deference, neutral principles, and constructive trust analysis. For the reasons discussed above, a writ of certiorari should issue to review the judgment of the Ohio Supreme Court.

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[36] *See* Comment, n. 20 *supra*, 43 Miss. L.J. at 727.

[37] *See* "Moral Personality and Legal Personality," in 3 Collected Papers of Frederic William Maitland 304, 319 (Fisher, ed., 1911) (discussing England's House of Lords' denial of effective powers of self-government to the Free Church of Scotland).

Date: December 5, 1989

Respectfully submitted,

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APPENDIX

APPENDIX

APPENDIX I. OPINION OF SUPREME COURT OF OHIO. A-1
APPENDIX II. OPINIONS OF COURT OF APPEALS OF OHIO A-2
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APPENDIX I

The Supreme Court of Ohio

1989 TERM

Case No. 89-1067

To wit: September 6, 1989

SOUTHERN OHIO STATE EXECUTIVE OFFICES OF CHURCH OF GOD, *et al.*,

Appellants,

v.

FAIRBORN CHURCH OF GOD, *et al.*,

Appellees.

ENTRY

Upon consideration of the motion for order directing the Court of Appeals for Greene County to certify its record, and the claimed appeal as of right from said court, it is ordered by the Court that said motion is overruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists therein.

COSTS:

Motion Fee, $20.00, paid by Miller, Finney & Clark.

(Court of Appeals No. 88CA71)

/s/ Thomas J. Moyer

THOMAS J. MOYER

Chief Justice

APPENDIX II

In The Court of Appeals of Greene County, Ohio

Case No. 88 CA 71
C.P. Case No. 87 CV 392

SOUTHERN OHIO STATE EXECUTIVE OFFICES OF CHURCH OF GOD, *et al.*,
Plaintiffs-Appellants,

v.

FAIRBORN CHURCH OF GOD, *et al.*,
Defendants-Appellees.

DECISION AND ENTRY

Rendered on the 12th day of June, 1989

JEROME G. MENZ, P.O. BOX 610, Xenia, Ohio 45385-0610
Attorney for Plaintiffs-Appellants

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and

PHILLIP L. BEARD, Suite One, 260 North Detroit Street, Xenia, Ohio 45385
Attorney for Defendants-Appellees

. . . . .

PER CURIAM:

This matter is before us on the motion of Plaintiff-Appellant, Southern Ohio State Executive Offices of Church of God, et al, to certify the record of this case to the Supreme Court of Ohio for review and final determination, pursuant to R.C. 2501.12. In support of the motion, Plaintiff-Appellant contends that the judgment of this court is in conflict with the judgment of the Court of Appeals of Lorain [2] County, Ninth Appellate District, in the case of *Sts. Cyril and Methodius Orthodox Church* v. *Ivanov*, et al., C.A. No. 3716, decided February 13, 1985.

Plaintiff-Appellant contends that the judgment of this court is in conflict with the said judgment of the Ninth Appellate District in determining the applicability of the rule of *Morrow* v. *Hill* (1977), 51 Ohio St. 2d 74, to resolution of disputes concerning ownership of church property.

In the case before us, the judges of this court determined that property ownership is to be determined by "the ordinary indicia of property rights". *Serbian Orthodox Church* v. *Keleman* (1970), 21 Ohio St. 2d 154, 160. We declined to follow *Morrow* v. *Hill*, finding that its rule was applicable to resolution of factional disputes concerning control of a church or congregation and that it was not to be employed in resolution of disputes as to ownership of real property held in the name of a church. For that purpose we relied on *Keleman*.

In its opinion and order the Ninth Appellate District found that determinations of ownership of church property must be decided by the same ordinary indicia of property rights, i.e., the church's code of regulations, bylaws, corporate laws of the state, and other secular instruments. The opinion specifically cited and relied on *Keleman*. It rejected application of *Morrow* v. *Hill* to resolve the property dispute, noting that its "living [3] relationship" rule is limited to determining connections between local parishes and hierarchical organizations.

We find that there is no demonstrable conflict between the two cases and, therefore, deny the motion to certify.

/s/ William H. Wolff, Jr.
WILLIAM H. WOLFF, JR., Presiding Judge

/s/ Richard K. Wilson
RICHARD K. WILSON, Judge

/s/ Thomas J. Grady
THOMAS J. GRADY, Judge

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Hon. M. David Reid

In The Court of Appeals of Greene County, Ohio

Case No. 88 CA 71
C.P. Case No. 87 CV 392

SOUTHERN OHIO STATE EXECUTIVE OFFICES OF CHURCH OF GOD, *et al.*,
Plaintiffs-Appellants,

v.

FAIRBORN CHURCH OF GOD, *et al.*,
Defendants-Appellees.

DECISION AND ENTRY

Rendered on the 24th day of April, 1989

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and

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Attorney for Defendants-Appellees

. . . . .

PER CURIAM:

Plaintiff-Appellant has asked that we reconsider our decision and the applicability of *Morrow* v. *Hill* (1977), 51 Ohio St. 2d 74 to the issue presented to the court below; whether the

Fairborn Church of God is required to obtain the consent of Plaintiff-Appellant in order to sell, transfer or convey real estate titled in the name of the Fairborn Church of God.

Disputes between parent and local churches concerning ownership or control of church property require that we apply [2] the decisional rules of *Watson* v. *Jones* (1871), 80 U.S. (13 Wall) 666; *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969), 393 U.S. 440; and *Serbian Orthodox Church* v. *Keleman* (1970), 21 Ohio St. 2d 154. Those cases, taken together, hold that a local church organization may hold title to real property in "implied trust" for the benefit of the parent church in its hierarchy, but the decisions limit determination and enforcement by civil courts of the rights of the parent in that property to those rights which may be determined according to "neutral principles of law." Ohio has rejected the implied trust theory founded on a hierarchical relationship alone, and demands that any ownership interest of the parent church in property be determined by "the ordinary indicia of property rights". *Keleman*, *supra*, at 160.

We have found that the ordinary indicia of property rights in this case may be found in deeds, articles of incorporation, and Minutes and Polity documents of the Church of God of Cleveland, Tennessee, in their non-ecclesiastical passages. In none of those sources can we find a property right of Plaintiff-Appellant recognized in Ohio law.

Morrow v. *Hill*, *supra*, neither modified the rules of the above-referenced cases nor disposes of the issues before us. In *Morrow* there was no direct dispute as to real property. The dispute was between two factions of a local church competing for control. One faction wished to remain associated with a parent [3] church and the other faction wished to disassociate from it. The question for the Court was: which faction is rightly the local Church?

The issue in *Morrow* could not be resolved with reference to deeds, articles of incorporation, or similar documents that might bear the "ordinary indicia of property rights". Neither

could it be resolved by deference to the decision of a church judicatory, because there was none. The court was, therefore, obliged to review the lines of authority between parent and local church as they existed before the dispute arose.

The court in *Morrow* declined to look into ecclesiastical doctrine. It did examine church discipline, however, and found that the local church had subscribed to the doctrine and control of the parent church. The court held that the local church could not voluntarily terminate that relationship without also terminating its rights to its property to the parent denomination.

Morrow v. *Hill* did not follow the analysis in *Keleman*, *supra*, because the issue of title was not dispositive of the issue before the court in *Morrow*. Where, as here, title *is* the issue, we are obligated to follow the decisional rules of *Watson*, *Blue Hull*, and *Keleman*, and decide on the basis of "the ordinary indicia of property rights".

[4] The Motion for Reconsideration is denied.

/s/ William H. Wolff, Jr.
WILLIAM H. WOLFF, JR., Presiding Judge

/s/ Richard K. Wilson
RICHARD K. WILSON, Judge

/s/ Thomas J. Grady
THOMAS J. GRADY, Judge

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Hon. M. David Reid

In The Court of Appeals of Greene County, Ohio

Case No. 88 CA 71
C.P. Case No. 87 CV 392

SOUTHERN OHIO STATE EXECUTIVE OFFICES OF CHURCH OF GOD, *et al.*,
Plaintiffs-Appellants,

v.

FAIRBORN CHURCH OF GOD, *et al.*,
Defendants-Appellees.

OPINION

Rendered on the 29th day of March, 1989.

JEROME G. MENZ, P.O. BOX 610, Xenia, Ohio 45385-0610
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and

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Attorney for Defendants-Appellees

. . . . .

GRADY, J.

Appeal is taken by Plaintiff-Appellant, Southern Ohio State Executive Offices of Church of God, from the judgment and decision of the Court of Common Pleas of Greene County.

A Complaint For Declaratory Judgment was filed below by Plaintiff-Appellant asking the Court of Common Pleas to determine certain issues arising from its relation to Defendant-Appellee, Fairborn Church of God. A counterclaim for declaratory judgment on the same issues was then filed by Defendant-Appellee.

[2] The matter in issue between the parties concerns real property titled in the name of the Fairborn Church of God. Appellants (hereinafter "Executive Offices") asked the court to determine and declare that the Fairborn Church of God (hereinafter, "Fairborn Church") was and is required to obtain the prior permission of the Executive Offices before conveying any interest in that real property, and to find that Fairborn Church held title to the real property in trust for the Executive Offices. Appellees, Fairborn Church, asked the Court to determine and declare that it holds title in fee simple, without any trust or right of reversion benefiting the Executive Offices, and that no permission from the Executive Offices is required of the Fairborn Church to convey its rights in the real property.

After consideration of motions for summary judgment, supported by extensive legal memoranda, exhibits and depositions, filed by both parties, the Common Pleas Court found in favor of the Fairborn Church on its motion. The Court determined that the Executive Offices, and the Church of God in general, have no interests, legal or equitable, in real estate owned by the Fairborn Church, and, ordered that the Fairborn Church is entitled to transfer, sell or otherwise convey its real estate without obtaining the consent of the Executive Offices.

[3] FIRST ASSIGNMENT OF ERROR

THE COURT BELOW ERRED TO THE PREJUDICE OF PLAINTIFFS-APPELLANTS UPON ITS INCORRECT APPLICATION OF THE NEUTRAL PRINCIPLES OF LAW DOCTRINE.

The "neutral principles of law doctrine" cited by Appellants is a decisional method mandated by the United States Supreme

Court for use by the courts in resolution of intra-church property disputes. Its purpose is to avoid incursions by the civil courts into matters of religious dogma, doctrine or practice the freedom of which from government interference is guaranteed by the First Amendment.

The essence of the case advanced by Plaintiff-Appellant, Executive Offices, is that the history of its relationship with Fairborn Church requires the law to find that Fairborn Church holds title to the real property in trust, express, implied or constructive, for the benefit of the Executive Offices.

The facts presented to the Court below show that the Fairborn Church of God is a local congregation of the Church of God, of Cleveland, Tennessee. That organization operates through a constituted General Assembly, which acts as a judicatory body in matters of ecclesiastical doctrine and government, and a General Executive Committee. The chief officer of both is a General Overseer. His counterpart on the state level is the State Overseer, and on the district level is the District Overseer. The State Overseer is also appointed by the General Executive Committee.

[4] The State Overseer conducts general evangelistic duties and has authority to appoint overseers and pastors of local churches. The State Overseer also has authority to authorize the organization of local churches and, together with the district overseer, has authority to approve the selection, purchase and construction of all real property of the church.

Plaintiff-Appellant, Southern Ohio Executive Offices of the Church of God, is an Ohio not-for-profit corporation, acting by and on behalf of the Church of God, of Cleveland, Tennessee, its General Assembly and Executive Committee. The chief executive officer of Plaintiff-Appellant is a District Overseer. During most of the times concerned herein that person was Harold B. Thompson.

The Fairborn Church of God is organized as a not-for-profit corporation in Ohio, and has been so organized since 1963. Its

pastor and corporate chief executive officer is Rev. Ancil Carter, who began his association with the denomination in 1948 as a minister. Rev. Carter has served as pastor of Fairborn Church for many years, both before and since incorporation. Additionally, Rev. Carter served as District Overseer of the Southern Ohio Executive Offices from 1970 to 1987.

The current Fairborn Church of God is a successor to several unincorporated associations: the Church of God, Fairborn; the Church of God at Wright View Heights; and, the Church of God at Fairfield. Each of those operated as local congregations of the Church of God, of Cleveland, Tennessee.

[5] After its consolidation, the Fairborn Church gave consideration to the need for mortgage loans to support its real property needs. It was learned that in Ohio it is difficult for unincorporated associations to obtain such loans from lending institutions, or was in 1963 when the problem arose. Reverend Carter, who was then as now pastor of the Fairborn Church, discussed this matter on several occasions with the State Overseer, Reverend F. W. Goff, who gave permission to Carter and the congregation to incorporate. Articles of Incorporation for the Fairborn Church of God were thereafter filed on July 8, 1963. It is clear that the motivation for incorporation was to facilitate mortgage loans and other real property transactions. Shortly after its incorporation the Fairborn Church sought and obtained its first such loan.

According to its Articles of Incorporation, the corporate purposes of the Fairborn Church of God are:

> "To form and become the Fairborn Church of God under and in accordance with the General Assembly of the Church of God and to do all things not prohibited by law, and which are in accordance with the teachings of the General Assembly of the Church of God.

It is and for many years has been the position of the General Assembly of the Church of God that real property held by a local church is held in trust for the use and benefit of the Church of God, Cleveland, Tennessee. A rule was adopted by the

General Assembly that any conveyance of real estate to a local church was to be made by a deed form prescribed by the General [6] Assembly and containing the following language: "The said Local Board of Trustees shall hold title to, manage and control the said real estate for the general use and benefit of the Church of God, having its general headquarters in Cleveland, Tennessee, and for the particular use and benefit of the local congregation of the said Church . . ." The deed form goes on to require that conveyances must be approved by a local church conference presided over by the State Overseer. Further provisions require conveyances to the State Board of Trustees should the local church cease to exist. The General Assembly required that the deed form be used by local churches, and that if it could not be used in its form that similar language benefiting the state and national churches be employed in deeds.

The foregoing requirements, which pre-date the 1963 incorporation of the local church, were known to Rev. Carter, pastor of the Fairborn Church. Between 1960 and 1986 Rev. Carter regularly attended the biannual meetings of the General Assembly and other business meetings at which such requirements were discussed. However, and contrary to those requirements, from the date of its incorporation in 1963 the Fairborn Church of God failed to either use the prescribed Church of God warranty deed form or its terms benefiting the Church of God in the course of its real property transactions. Instead, standard warranty deed forms were employed, and those documents on their face settled fee simple title clearly and exclusively on the corporate entity of the Fairborn Church of God.

[7] Prior to its incorporation the Fairborn Church of God conformed to the deed requirements of the General Assembly. In 1951, the Church of God, one of the predecessor unincorporated associations that later formed the Fairborn Church, received land from Mary L. Hall, a widow, on a Church of God warranty deed form containing the beneficial provisions discussed above. After its incorporation, however, no real estate

transaction by the Fairborn Church employed the deed form or its special language. None of those subsequent transactions was approved by the State Overseer or the district overseer and permission of those officers was not sought by the Fairborn Church. At least four such acquisition transactions took place between 1963 and 1986.

In 1986 the Fairborn Church undertook purchase of 156 acres of land financed by mortgage. Of that land, a part was to be conveyed to a private developer in a transaction that would produce a substantial profit for the Fairborn Church. In a related transaction, the Fairborn Church offered to sell some of its property to a church of another denomination, which alerted the State Overseer to the lack of beneficial passages in the titles in the name of the Fairborn Church. Thereafter, the Executive Offices acted to protect its interests by making and filing with the county recorder an affidavit asserting its interests in lands owned by the Fairborn Church. This action cast a cloud on the titles. The declaratory judgment action below, as brought by both sides, asked resolution of that issue.

It is clear that there are no material issues of fact [8] before us. The Fairborn Church of God, and its pastor, Rev. Carter, were fully aware of the requirements of the General Assembly of the Church of God that the local church employ deed forms or language benefiting the national church. The Fairborn Church did not act in accordance with those requirements. Neither did the Fairborn Church comply with the requirement that the prior permission of the State Overseer or his agent, the district overseer, be obtained before any transactions in real property were made.

These acts of the Fairborn Church commenced with its incorporation in 1963. Until the current dispute arose, the Fairborn Church remained in all other respects a faithful local congregation of the Church of God, Cleveland, Tennessee. Until 1987, when this dispute arose, tithes were remitted by the Fairborn Church to the General Assembly on a regular basis and in a substantial amount. Those remissions ceased in 1987.

Also in that period, the General Assembly or its agents authorized formation of another congregation of the Church of God in a nearby area.

All monies raised to acquire the real property in issue came from the Fairborn Church. Neither the General Assembly nor any of its agencies made any material financial contribution to those purposes.

The claims of Plaintiff-Appellant Executive Offices are founded on the nature and course of the relationships described above. Plaintiff-Appellant asked the lower court to determine and order that by reason thereof there exists an "implied trust" [9] in favor of the General Assembly of the Church of God, Cleveland, Tennessee, that is impressed upon the legal title otherwise held by the local Fairborn Church of God.

The doctrine of "implied trust" as applied to intra-church property disputes began to evolve in England in the early nineteenth century as legal toleration of religious dissent grew. *Craigdallie* v. *Aikman* (H.L. 1813), 3 Eng. Rep. 601, was the first reported English case dealing with an intra-church controversy over property. The dispute arose between a majority and minority faction of the Session Church over a chapel. It was Lord Eldon's view that a court must look to the original principles of a society and award property to the group which adhered to these principles whether or not it constituted a majority or minority of the congregation and whether or not it adhered to the governing authority of the church, unless there was evidence of a contract among the members of the congregation that the property was subject to the control of the general church.

In *Attorney-General ex rel. Mander* v. *Pearson* (Ch. 817) 36 Eng. Rep. 135, the dispute was among trustees over whether Unitarians or Protestant dissenters could use a meeting house. The court found that church property was held in trust for the propagation of particular religious doctrines, and it was the duty of the court to decide for itself the nature of the original institution and the standard of faith it represented and to

award the property to the faction adhering to that [10] standard. The court adopted the theory that local church members had bound themselves by an implied contract to adhere to the original doctrines. The idea of an implied contract became known as an implied trust.

Pearson, supra, became the law of England governing intra-church disputes as resolved the civil courts. Those courts did not exhibit a reluctance to determine and weigh issues of religious doctrine, dogma or practice in arriving at their decisions. England maintained an established church, and the courts presumed their competence and authority to deal with such issues.

The implied trust theory was transplanted to the United States,also in the early nineteenth century. Though American courts were bound by very different considerations because of the First Amendment *prohibition* of an established religion, the American courts came to results similar to those of the English courts of the same era.

The "implied trust doctrine" evolved in the mid-atlantic, southern and midwestern states. Where a divided congregation held property under an express trust deed stipulating that the congregation be connected with or subordinate to a general church organization, the courts enforced the trust in favor of the party adhering to that organization. See *McBride* v. *Porter (1864), 17 Iowa 203; Gibson* v. *Armstrong* (1847), 46 Ky. (7 B. Mon.) 481.

Some courts declared that church property no matter how it [11] was obtained was impressed with a trust for the maintenance of the forms of ecclesiastical government to which the founders had adhered. See *First Constitutional Presbyterian Church* v. *Congregational Society* (1867), 23 Iowa 567; *Sulter* v. *Trustees of the First Reformed Dutch Church* (1862), 42 Pa. 503.

Although the rule resembled the English "implied trust doctrine", American courts emphasized continuity of

denominational affiliation rather than continuity of religious tenents and generally refused to review the decisions of hierarchical church judicatories on matters of doctrine. See *Gibson* v. *Armstrong, supra; First Constitutional Presbyterian, supra.*

In *Keyser* v. *Stanisfer* (1834), 6 Ohio 364, the *Ohio Supreme Court* rejected the implied trust approach. The decision of the majority of the congregation would govern disposition of church property. The court held that unless the deed to church property contained an unequivocal dedication in support of a particular doctrine or form of church government, the local congregations would be deemed owner in fee simple. See also *Trustees of the Organ Meeting House* v. *Sealord* (1830), 16 N.C. (I Devereux's Eq.) 453.

The authority of the civil courts to inquire into such issues for the purpose of resolving intrachurch property disputes was confirmed by the Supreme Court of the United States in *Watson* v. *Jones* (1871) 80 U.S. (13 Wall) 666.

In supporting the right of a state to follow the "implied trust" [12] theory, the court distinguished cases in which there exists a clear, expressed trust, cases in which there can exist no form of shared ownership interest because the local congregation is strictly independent of any other ecclesiastical governmental associations, and cases in which an implied trust might be found. The court described the latter as those

> ". . . where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization." 80 U.S. (13 Wall) 679, 722-723.

Actual resolution of implied trust questions has required that courts inquire into the "polity", or internal structure, of church relationships.

> "At least three kinds of internal structure, or "polity" may be discerned; congregational, presbyterial, and episcopal. In the congregational form, each local congregation is self-governing. The presbyterial polities are representative, authority being exercised by laymen and ministers in an ascending succession of judicatories—presbytery over the session of the local church, synod over presbytery, and general assembly over all. In the episcopal form power reposes in the clerical superiors such as bishops. Roughly presbyterial and episcopal polities may be considered hierarchical as opposed to congregational polities in which the autonomy of the local congregation is the central principle." 75 Harv. L. Rev. 1143-44.

Only the hierarchical polity will support the implied trust relationship. The courts must, therefore, delve into the nature [13] and form of the relationship between the church bodies in dispute to resolve the dispute.

The focus and scope of any inquiry into church polities is governed by the decision of the United States Supreme Court in *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969) 393 U.S. 440, 658. The Supreme Court found that the First Amendment prohibits any inquiry by the courts into religious doctrine or practice. The court stated that the courts have "*no role* in determining ecclesiastical questions in the process of resolving property disputes." 339 U.S. 447. But, the court gave some guidance to the lower courts in making proper inquiries.

> "Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are *neutral principles of law*, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." 393 U.S. 440, 449, 89 S. Ct. 601, 606. (Emphasis supplied.). . .

> "(T)he Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." 393 U.S. 440, 449, 89 S. Ct. 601, 606.

[14] The United States Supreme Court did not clearly define what it considered "neutral principles of law", but the state courts have given meaning to the term. In *Maryland and Virginia Eldership* v. *Church of God* (1969), 254 Md. 162, the Court of Appeals of Maryland found that the concept included state statutory law, the explicit language of deeds, the charter of the local church and the provisions of the constitution of the general church concerning ownership and control of church property. The United States Supreme Court approved of that approach in a later decision dismissing appeal, finding that it "involved no inquiry into religious doctrine." (1970), 396 U.S. 367, 368.

The Supreme Court of Ohio addressed the issue of neutral principles of law in *Serbian Orthodox Church, etc.* v. *Kelemen* (1970) 21 Ohio St. 2d 154, a case that was remanded by the United States Supreme Court for further consideration in the light of the decision in the *Blue Hull* case.

The issue of the *Kelemen* case arose from a dispute between two competing factions for control and use of a local church. The Court of Appeals made an inquiry into organizational relationships in resolving the dispute. The Supreme Court found that those inquiries were "unnecessary and immaterial to a *neutral law* inquiry utilizing principles of law developed for use in *all* property disputes." 21 Ohio St. 154, 159. The Court admonished against attempts to determine matters of church government.

Addressing itself to the "neutral principles of law" [15] standard, the Supreme Court of Ohio announced in *Kelemen* that those principles as applicable in the dispute before it were "the ordinary indicia of property rights." 21 Ohio St. 2d 154, 160.

The Court found that it could and should look to the articles of incorporation of the local church, the deeds involved, and the general law of Ohio. On that latter point, the court stated: "A review of Ohio law does not reveal recognition of an implied trust theory of real property when a local church joins a church hierarchy." 21 Ohio St. 2d 154, 160. Though the Court offered no references of authority, that decision is in accord with the 1834 decision of the Supreme Court of Ohio in *Keyser* v. *Stanisfer, supra.*

Defendant-Appellant's Assignment of Error here considered argues that the trial court misapplied the "neutral principles of law doctrine", in two ways. First, that the trial court erroneously excluded certain documents relating to the General Assembly and, second, that the trial court reached the wrong conclusion in finding that Plaintiff-Appellant had no form of ownership interest in the subject property cognizable by Ohio law. We shall consider the issues in that order.

The decision of the trial court shows that it limited its inquiry according to the "neutral principles of law" standard to the terms of warranty deeds, the articles of incorporation of the Fairborn Church and the statutory and common law of Ohio. The trial court declined to examine other documents proffered by Defendant-Appellant: the Minutes of the General Assembly of the Church of God and the Church of God Polity. Defendant-Appellant [16] argues that those documents are not only relevant to the issue of property ownership but also proper for inquiry under the "neutral principles of law" standard.

Defendant-Appellant attributes the argued error of the trial court to its finding that the Fairborn Church does not bear a *hierarchical* relationship to the Executive Offices and through it to the General Assembly of the Church of God. Though the trial court did not make an express determination of the issue, it is clear that the course of the decisions beginning with *Watson* v. *Jones, supra*, support that inquiry.

The reluctance of the trial court to address the issue of church polity, i.e., whether the relationship is hierarchical, is

understandable in the light of the admonitions of the Supreme Court of Ohio in the *Kelemen* case. Similar inquiries by the lower Court of Appeals were characterized as "unnecessary and immaterial to a neutral law inquiry utilizing principles of law developed for use in all property disputes." 21 Ohio St. 2d 154, 159. We believe *Kelemen* to be distinguishable from the instant case, however. *Kelemen* involved a general dispute as to church governance that was intertwined with doctrinal disputes. *Keleman* involved accusations of schism, an issue concerning which the Court of Appeals made inquiry. These questions compelled resolution, or at least consideration, of an underlying controversy of an ecclesiastical nature. The case before us does not. There is no general dispute about church governance; certainly not one arising from a dispute over doctrine, dogma or religious practice. The sole issue concerns [17] the ownership of real property. In this case the courts cannot avoid their responsibility to resolve a dispute civil in character because the litigants are religious bodies. "Civil courts do not inhibit the free exercise of religion merely by opening their doors to disputes involving church property." *Presbyterian Church* v. *Hull Church*, *supra*, at 449.

The fundamental definition of an hierarchical church relationship was stated in *Watson*, v. *Jones*, *supra*, and quoted earlier. Those factors and tests are met here. The General Assembly of the Church of God has the right to establish law to govern its constituent members, including local churches. Operating through its State Overseer, the General Assembly appoints district overseers and pastors. The General Assembly thus authorizes the creation of local churches, and did so in this case. Indeed, the Fairborn Church admits that it is bound by the decisions of the General Assembly in matters of doctrine, teaching and polity, though it denies the same "with reference to legal or property matters." The Fairborn Church is, therefore, in a hierarchical relationship to and with the Church of God, Cleveland, Tennessee.

Having found a hierarchical relationship, does that authorize a civil court to look beyond deeds and articles of incorporation

to church constitutions and similar documents? We believe that it does. The rule in the *Kelemen* case restricts an Ohio court employing neutral principles of law in a property dispute case to those documents that reflect the "ordinary indicia of property rights." 21 Ohio St. 2d, 160. Those [18] indicia may be present in constitutional documents of the general denominational church. Though Ohio law does not support the theory of implied trust, underlying documents may show the existence of an express or constructive trust, or similar interest, which are recognized in Ohio.

The Minutes of the General Assembly and the Church of God Polity documents proferred by Defendant-Appellant contain some passages that are secular and others that are ecclesiastical. Certainly, the enjoinder in the Minutes that "the Church of God stands now as it has always stood, for the whole Bible, rightly divided," is a passage of exclusively ecclesiastical character. However, other sections are purely secular in their terms. That part of the Supplement to the Minutes cited by Plaintiff-Appellant as a basis for its claim, states:

> . . ."4. A local Board of Trustees shall hold title to manage and control pursuant to the direction of the local congregation all real estate owned by the local congregation by which they are selected provided that all such property shall be used, managed and controlled for the sole and exclusive use and benefit of the Church of God, Cleveland, Tennessee, U.S.A." (Supplement to the Minutes—(XXXVIII) RELATIONSHIP OF THE LOCAL CHURCH TO THE GENERAL ASSEMBLY, EXHIBIT, 1 TR 051)

The guiding principle in review of church documents in civil controversies is that the civil courts may not seek to resolve disputes of an ecclesiastical nature or to make ecclesiastical determinations. A ". . . State may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, [19] whether the ritual and liturgy of worship or the tenets of faith." *Maryland and Virginia, supra,* 396 U.S., 368.

In *Hull Church* the Supreme Court instructed religious bodies to "structure relationships involving church property so as not to require civil courts to resolve ecclesiastical questions." 393 U.S. 440. Civil courts are thus limited to purely secular issues. However, the court is not required to exclude a document or other written source from consideration because it contains passages of an ecclesiastical nature. The United States Supreme Court in *Jones* v. *Wolf* (1979), 443 U.S. 595, found that the courts might review such documents in resolving church property disputes according to neutral principles of law. The Court cautioned, however:

> "In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties intended to create a trust." 61 L Ed 2d, 785.

We find that the Minutes and Polity documents relied upon by Plaintiff-Appellants need not be wholly excluded from consideration by reason of the neutral principles of law rule. While they contain ecclesiastical pronouncements, they also contain passages of a secular nature that bear on the property dispute. Those passages may be scrutinized in purely secular terms. Unless excludable on more conventional bases established in the Rules of Evidence, the trial court should have given them consideration in making its determination.

[20] The second component of Plaintiff-Appellant's Assignment of Error is that the trial court erred in failing to find some form of beneficial interest in the Executive Offices in the title ownership of the real property. In addressing this question, we shall consider those passages in the Minutes and Polity documents which may be analyzed on a secular basis, along with Articles of Incorporation, deeds, and the general law of Ohio.

Plaintiff-Appellant argues that an "implied trust" arises from the relationship between the Fairborn Church and the Church of God, Cleveland, Tennessee. In each of the major decisions supporting that theory, *Watson*, *Hull Church*, *Mary-*

land and Virginia, Wolf, the underlying law of the jurisdiction concerned supported the application of the implied trust doctrine in church property disputes. Ohio does not, however. In both the *Kelemen* case and the earlier case of *Keyser* v. *Stanisfer, supra,* the Supreme Court of Ohio rejected the doctrine. We cannot, therefore, attempt its application here.

The neutral principles of law doctrine is not restricted to applications of the implied trust theory. "The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." *Jones* v. *Wolf* (1979), 443 U.S. 595. A review of those concepts is appropriate.

The trial court found that the documents reviewed by it did not support a finding that the Executive offices held some title interest in the real property, whether by the terms of the deeds [21] or the terms of an express trust. Additional consideration of the Minutes and Polity documents compel the same conclusions. They do not contain the explicit provisions necessary to create an interest of either kind in the Executive Offices or the Church of God, Cleveland, Tennessee.

The deeds contain no language settling an interest on the general church. Indeed, that omission is the source of this litigation. We note, however, that the 1951 conveyance by Mary Hall to one of the predecessor unincorporated associations contained language benefiting the general church. We have not been informed of the extent to which the current holdings of Defendant-Appellee are affected by that conveyance, and no question of undue enrichment arising from that transaction has been raised.

We cannot find that the terms of the Minutes, their supplements, or the Polity documents, create an "express trust" favoring the general church. The terms of the Supplement to the Minutes quoted above provide that the local church and congregation shall hold title to and manage and control the property. Those terms further provide that such ownership shall be discharged for the "sole and exclusive use and benefit of the Church of God, Cleveland, Tennessee". At most, these

provisions, and others concerning use of deeds, create a form of "equitable charge" on the ownership interest of the local church. The local church is not a fiduciary of the general church. The local church holds most, if not all, of the [22] ownership interest. The factors distinguish the relationship from a trust. (See Bogert, *Trusts*, Sixth Ed., West Publishing Co., Sec. 14.). A beneficiary of an equitable charge may bring an action for breach. But, no breach or damages arising therefrom has been alleged. Indeed, the element of failure to use deeds appears to be the only division between the parties.

Ohio has recognized the doctrine of "constructive trust", and has applied it to real property transactions.

> "A constructive trust is a fiction of equity, devised to the end that the equitable remedies available against a conventional fiduciary may be available under the same name and processes against one who through fraud or mistake or any means ex maleficio acquires property of another. *Pearl-Market Bank & Trust Co.* v. *Edward D. Woodward Co.*, 22 Abs 328 (App. 1935).
>
> "Whenever one person is placed in a relation to another, by the act or consent of that other, or the act of a third person, or of the law, so that he becomes interested for him or with him, in any subject of property or business, he will in equity be prohibited from acquiring rights in that subject which are antagonistic to the person with who interest he has been associated. *Shaw* v. *Perry*, 95 NE2d 585, 58 Abs 112 (App. 1949)."

McDermott, *Ohio Real Property Law and Practice*, Vol. 3, p. 352, § 27-14A. Constructive trusts have been imposed when it is found that one party is enriched at the expense of another with whom he maintains a "confidential or fiduciary relationship," McDermott, p. 353. Indeed, constructive trusts have been found in cases in which no fraud is involved.

The Court of Appeals of Washington County made the [23] following observations in its Syllabus in *Croston* v. *Croston* (1969), 18 Ohio App. 2d 159.

> "1. A constructive trust is created by operation of law and arises where the holder of the legal estate in property

cannot also enjoy the beneficial interest therein without violating some established principle of equity.

"2. In order for a constructive trust to be imposed, the conduct of the parties must be such as to give rise to the exercise of equitable jurisdiction."

There are strong reasons to find that the Fairborn Church, in its corporate body, holds title to the real property in question in constructive trust for Plaintiff-Appellants and the Church of God, Cleveland, Tennessee. Rev. Ancil Carter, chief corporate executive officer, has been an ordained minister in the Church of God Denomination for 40 years. He must be presumed to have enjoyed the special trust and confidence of that body. During much of the period since incorporation of the Fairborn Church, Rev. Carter was a district overseer whose functions were to protect the interest of Plaintiff-Appellants and their parent organizations. He failed to do so, even though he was fully aware of the policies adopted by the General Assembly of the Church of God concerning property ownership matters. Rev. Carter seems to have regarded the incorporation of his church as authority to deviate from those policies and an opportunity to do so to the greater profit of his own congregation. Plaintiff-Appellant never regarded its permission to incorporate as conveying those benefits to the Fairborn Church.

[24] We are, nevertheless, unable to impose a constructive trust for the benefit of Plaintiff-Appellants. The monies for the purchase of the real property came only from the congregation of the Fairborn Church. No contribution came from Plaintiff-Appellants or their parent bodies. There is not, therefore, an unjust enrichment adequate to give rise to equitable jurisdiction.

Plaintiff-Appellants further argue that the "living relationship" test adopted in certain cases should be followed here to make findings that the Fairborn Church is bound by the decisions of Plaintiff-Appellants and, ultimately, the Church of God, Cleveland, Tennessee. The "living relationship" test has been followed by certain courts including the Supreme Court of

Ohio. (*Morrow* v. *Hill* (1977), 51 Ohio St. 2d 74,), the United States District Court for the Eastern District of Michigan (*Kendysh* v. *Holy Spirit B.O.A.C.* (1987), 683 F. Supp. 1501), and the U.S. Sixth Circuit Court of Appeals (*Kendysh* v. *Holy Spirit, etc.*, Case N. 87-1637, unreported, July 6, 1988, appended to the brief of Plaintiff-Appellant).

We believe that the living relationship test is not appropriate to the issues before us in this case. The living relationship test looks *beyond* the ordinary indicia of property ownership expressed in deeds, articles of incorporation, and like documents, and examines the rituals and practices of the churches in dispute to determine the governmental relationship or polity prevailing.

[25] The cases employing the living relationship test have done so as a part of the determination of the prevailing church polity—congregational or hierarchical. In those cases deeds, articles of incorporation, church constitutions, and other similar documents have been inconclusive in determining that issue. In addition, the cases arise from a setting in which a schism has produced competing factions each of which demands recognition as the authentic representative of the original body with the consequent right to control the pulpit and the real estate. The courts have examined ritual and practice to settle such disputes, but only in a secular sense and only to determine whether an expressed choice of the parent body governs disposition of the property.

The issues concerned in the living relationship cases are not before us here. There is no schism: the General Assembly of the Church of God has not sought to oust Rev. Carter or declare his congregation in schism, and the Fairborn Church has not acted to separate itself from the doctrinal or secular control of the parent body, except as to ownership of real property. The polity of the church is clear—it is a hierarchical relationship. No further reference need be made to ritual or practice to determine that. Indeed, reference to ritual and practice sheds no additional light on the central issue; who owns the real prop-

erty. That issue is settled in the deeds, articles of incorporation, Minutes, Polity, and other documents.

[26] **SECOND ASSIGNMENT OF ERROR**

THE COURT BELOW, UPON ITS REFUSAL TO IMPRESS THE REAL ESTATE OWNED BY THE FAIRBORN CHURCH OF GOD WITH A TRUST FOR THE USE AND BENEFIT OF CHURCH OF GOD THROUGH ITS STATE OVERSEER, VIOLATED THE FIRST AMENDMENT AND FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Plaintiff-Appellant argues that the courts are obligated to follow and enforce the decisions in matters of church government of the General Assembly of the Church of God as that body has acted as a judicatory body making decisions of an ecclesiastical nature. To do otherwise, they assert, contravenes the First Amendment and establishes a religion.

Plaintiff-Appellant relies on the decision of the United States Supreme Court in *Serbian Orthodox Diocese* v. *Milivojevich* (1976), 426 U.S. 696. In that case the parent church defrocked a bishop. The Illinois courts reversed that decision, finding that the ecclesiastical body had failed to follow its own adopted procedures. The United States Supreme Court reversed, holding that the Illinois court's action was an improper judicial interference with the decisions of a hierarchical church, and in thus interposing its judgment into matters of ecclesiastical cognizance and polity the court contravened the First and Fourteenth Amendments. The Court said:

> "For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense 'arbitrary' must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church adjudicatory [27] to follow, or else into substantive criteria by which they are supposedly to decide the ecclesiastical question. 426 U.S., 713.

The position taken by Plaintiff-Appellant would require the courts to enforce the announced decisions of the church judi-

catory in all ecclesiastical matters. That would, inevitably, entail inquires by the court into the regularity of those actions, the same kind of inquire prohibited in *Milivojevich*.

> "But it is easy to see that if the civil courts are to inquire into all these matters, the subject of the doctrine theology, and usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws . . . and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions. 426 U.S., 714, quoting *Watson* v. *Jones*, 13 Wall, at 733- 734.

The First Amendment enjoins and prohibits state action in matters of religion, i.e., in matters consisting of or touching on ecclesiastical issues of religious doctrine or practice, and it also prohibits ". . . state interference (in) matters of church government as well as those of faith and doctrine." *Kedroff* v. *St. Nicholas Cathedral* (1952), 344 U.S. 94.

Were this Court to delve into or mandate the enforcement of the decisions of the church judicatory, the General Assembly of [28] the Church of God, it would contravene the clear prohibitions of the First Amendment against "interference" in religious matters. We must not forget that the directions of the First Amendment are prohibitions of action. To undertake enforcement of church actions would violate the fundamental purpose of the Amendment.

Neither this court nor the court below has de facto established a religion in our decisions. We have followed the direction of the United States Supreme Court in the *Blue Hull* case to make our decision according to "neutral principles of law . . . . which can be applied without 'establishing' churches to which property is awarded." 393 U.S., 449.

For the reasons stated, this Court finds that the trial court did not err in sustaining the Motion for Summary Judgment of

Defendant- Appellee, the Fairborn Church of God. The judgment of the Court of Common Pleas will be affirmed.

WOLFF, P.J., and WILSON, J. concur.

Copies mailed to:

Jerome G. Menz
Thomas P. Whelley, II and Melanie R. Mackin
Phillip L. Beard
Hon. M. David Reid

In The Court of Appeals of Greene County, Ohio

Case No. 88 CA 71
C.P. Case No. 87 CV 392

SOUTHERN OHIO STATE EXECUTIVE OFFICES OF CHURCH OF GOD, *et al.*,
Plaintiffs-Appellants,

v.

FAIRBORN CHURCH OF GOD, *et al.*,
Defendants-Appellees.

FINAL ENTRY

Pursuant to the opinion of this court rendered on the 29th day of March, 1989, the judgment of the Court of Common Pleas is Affirmed.

/s/ William H. Wolff, Jr.
WILLIAM H. WOLFF, JR., Presiding Judge

/s/ Richard K. Wilson
RICHARD K. WILSON, Judge

/s/ Thomas J. Grady
THOMAS J. GRADY, Judge

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APPENDIX III

In The Common Pleas Court of Greene County, Ohio

Case No. 87 CV 392

SOUTHERN OHIO STATE EXECUTIVE OFFICES OF CHURCH OF GOD, *et al.*,

Plaintiffs,

v.

FAIRBORN CHURCH OF GOD, *et al.*,

Defendants.

JUDGMENT ENTRY

Filed: SEPT-9

This cause came on for hearing upon the motions of the Plaintiffs and the Defendants for summary judgment.

Having considered the Plaintiffs' motion, memorandum in support, attached exhibits, memorandum brief of law, memorandum supplementing memorandum in support, memorandum in opposition to the Defendant's motion for summary judgment, and response to Defendants' objections and the Defendants' motion for summary judgment, memorandum in support, memorandum contra to Plaintiffs' motion for summary judgment, Defendants' objection to Plaintiffs' supplemental memorandum, and reply to Plaintiffs' memorandum in opposition to Defendants' motion for summary judgment, the Court finds for the reasons set forth more fully below that the Defendants' motion should be granted.

The facts are as follows. Plaintiff, Southern Ohio State Executive Offices of Church of God (hereinafter Church of God), is an

Ohio not for profit corporation affiliated with and a part of the Church of God, Cleveland, Tennessee. Plaintiff Harold B. Thompson, is the state overseer of the Church of God.

The Defendant, Fairborn Church of God, is an Ohio not for profit corporation, incorporated in 1963, and generally affiliated with the Church of God. Defendant Reverend Ancil Carter is the Pastor of Defendant Fairborn Church of God.

The present action arose over a contract to sell and exchange real property (as described in Plaintiffs' complaint exhibits 1, 2, and 3) entered into by the Defendants and a third party.[1] Prior to closing, the Plaintiffs filed an "Affidavit On Facts Relating to Title" alleging that the Fairborn Church of God was subject to all rules and regulations of the Church of God and that by virtue of those rules and regulations, neither the Fairborn Church of God nor anyone acting on its behalf had the right to convey any legal or equitable interest in real estate without first obtaining the consent of the Church of God. That affidavit placed a cloud on the title to said property which is at the center of this dispute.

The Plaintiffs filed the instant action for declaratory judgment on October 8, 1987. The Plaintiffs prayed for a declaration that the Defendants are subject to the Plaintiffs rule and regulation, that all real property owned by Defendants is held in trust for the Plaintiff Church of God, and that the Defendants may not convey any interest, legal or equitable, in real estate without obtaining the consent of the Church of God through its state overseer.

In addition to answering the Plaintiffs' complaint, the Defendants filed a counterclaim asking for a declaration that they are the exclusive owners in fee simple of the subject real property, that Plaintiffs have no interests, equitable, legal, or otherwise, in the subject real property, that Defendants are

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[1] The third party was Oberer Development Co. A motion by Oberer to intervene in the present action was denied.

entitled to transfer, sell, or otherwise convey subject real property without obtaining consent from the Plaintiffs. The Defendants also filed a second counterclaim based on tortious interference with contractual relations and asking for $750,000 in compensatory damages and $1,000,000 in punitive damages plus interest and costs. The second counterclaim was subsequently dismissed without prejudice.

The issue then, is whether the Defendants must seek and receive the Plaintiffs' permission in order to alienate property to which the Defendants appear to have sole title. In this case resolution of this issue is complicated by the fact that two religious organizations are involved as litigants. This raises constitutional issues involving the First Amendment to the United States Constitution.

When resolving church property disputes such as the one here, courts should apply "neutral principles of law" which are normally used in deciding property issues. *Presbyterian Church In The United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969). If a court does not involve or consider doctrinal matters when deciding the outcome of church property disputes, it has a moderate amount of discretion in choosing a method of resolution. *Maryland & Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg*, 396 U.S. 367, 368 (1970). However, the United States Supreme Court has recommended that the "neutral principle" doctrine should be used as a framework within which a decision should be reached. *Jones* v. *Wolf*, 443 U.S. 595, 603 (1979).

The Supreme Court of Ohio adopted and outlined the "neutral principles" approach to be applied to church property disputes by Ohio Courts in *Serbian Orthodox Church* v. *Keleman*, 21 Ohio St. 2d 154, 256 N.E. 2d 212 (1970) (cert. denied at 400 U.S. 827). That case involved a dispute over the use of the name "St. Demetrius" (and other variations) and the right to use church property. The dispute was caused by a disagreement among the church membership over concerns about the

Mother Church's ties to the Government of Yugoslavia where its headquarters were located which were exacerbated when the Mother Church ordered the establishment of three dioceses in the United States and Canada instead of the one in existence. The Plaintiff in that case did not think there was any authority for making the change while other members did.

After finding that the Court of Appeals' findings concerning the organization hierarchy and power of the Mother Church to alter a diocese were neither necessary nor material to resolving the issue based on neutral principles of law, Id. at 159, the Supreme Court articulated that only the "ordinary indicia of property rights" should be the basis for resolution of church property disputes. Id. at 160. The Supreme Court then examined the articles of incorporation of the local church, the recorded deeds for the property in question, and Ohio law and found that the corporation held the legal title to the property. The Court also found that there was no evidence of a conveyance of the property to the Mother Church or the diocese from the local congregation and that no implied-trust theory was recognized in Ohio when a local congregation becomes part of a church hierarchy. Id at 160.

Near the end of the opinion, the Supreme Court reiterated what could be examined when resolving the issue on remand. The Court stated, "[t]he control of the name and property . . . must be determined only by reference to the provisions of the Code of Regulations and By-laws of the Corporation not for profit, the corporate laws of this state, and any other secular instruments not requiring resolution of religious tenets or doctrine." Id. at 162.

In the instant case, Defendant Fairborn Church of God was incorporated in 1963. At the time of incorporation, the purpose for forming the corporation was stated as "[t]o form and become the Fairborn Church of God under and in accordance with the General Assembly of the Church of God and to do all things not prohibited by law, and which are in accordance with the teachings of the General Assembly of the Church of God."

The original articles were amended on April 8, 1987. The purpose for forming the corporation was amended to read "[t]o form and become the Fairborn Church of God, and to do all things not prohibited by law."

Under Ohio law, title to property which is conveyed to and in the name of a church may be held in the name of such church. R.C. 1715.17. The title documents and deeds for the property at issue contain no language which indicates it is being held in trust for the Plaintiffs, but do contain language indicating instead that Defendant Fairborn Church of God, holds title to the property in fee simple.

In summary, the Court finds from a review of the initial and amended articles of incorporation, the corporate by-laws and the chain of title for the property in question, that the Defendant Fairborn Church of God has the authority to enter into a binding contract to convey the property in question. Also, there appears to be no secular deed of trust or mortgage on the property held by the Plaintiffs.

Limiting the inquiry to the secular documents previously stated, not only avoids infractions upon First Amendment religious freedoms but also protects the state's interest in maintaining the alienability of property and the purchaser's expectations of predictability and convenience in the acquisition of real property as well. As the Supreme Court of Ohio aptly stated in *Pfau, Admr.* v. *Moseley*, "[t]o permit the law of a state other than the state where land is located to govern or be an important factor in determining the title to such land would destroy the certainty and convenience so desirable in determining the title to land." *Pfau, Admr.* v. *Moseley*, 9 Ohio St. 2d 13, 18, 222 N.E.2d 639 (1966).

Analogously, to allow an out-of state organization to control the disposition of property in Ohio, without expressly giving notice to that control or interest in the chain of title, would likewise undermine the confidence and relative ease of determining title to land. The buyer's of real property would not only have to research the chain of title in the local recorder's office

but would also have to examine the out-of-state organizations governing documents in another state before they could confidently move forward with a purchase.

This is not to say that out-of-state organizations should not be able to hold an interest in land located in Ohio, of course they may do so. But if they do, their interest in property located within Ohio should be made readily apparent on the title documents instead of asserting an implied interest after a bargain has already been struck and necessitating costly litigation before a resolution can be reached.

Based upon the above, the Court finds that reasonable minds can come to but one conclusion and that conclusion is adverse to the Plaintiffs even when the evidence is construed most strongly in their favor. The Court further finds that Defendants are entitled to summary judgment as a matter of law. The Defendants motion for summary judgment is hereby and in all respects granted and the Plaintiffs' motion for summary judgment is hereby and in all respects denied. Therefore it is hereby

ORDERED, ADJUDGED, AND DECREED that the Fairborn Church of God is the Exclusive owner in fees simple of the real property described in Plaintiffs' exhibits 1, 2, and 3 and that the Southern Ohio State Executive Office of Church of God and the Church of God in general have no interests, equitable, legal, or otherwise, in the above real property. It is further

ORDERED, ADJUDGED, AND DECREED that the Fairborn Church of God is entitled to transfer, sell, or otherwise convey the real property described above without obtaining consent from the Southern Ohio State Executive Offices of Church of God and the Church of God in general.

IT IS SO ORDERED.

/s/ M. David Reid

JUDGE M. DAVID REID

SERVICE OF COPY: A copy of the foregoing was served upon Jerome G. Menz, 20 King Avenue, Xenia, Ohio 45385

Phillip L. Beard, 260 N. Detroit Street, Xenia, Ohio 45385
Richard Chernesky, 2000 Courthouse Plaza, P.O. Box 1817, Dayton, Ohio, 45401-1817

by mailing to them on the date of the file stamp hereon.

/s/ Delphine Crowe

DELPHINE CROWE, Bailiff

APPENDIX IV

MINUTES
of the
62nd General Assembly
of the
CHURCH OF GOD

Convening at the
Tarrant County
Convention Center

Fort Worth, Texas
August 2-7, 1988

Church of God Publishing House
Cleveland, Tennessee

[30] SUPPLEMENT TO THE MINUTES

S1. GENERAL CHURCH

[31] III. FORM OF GOVERNMENT

(1) Governing Body

After due consideration the Assembly adopted the following: We do not consider ourselves a legislative or executive body, but judicial only [1st A., 1906, Bk. M., p. 15).

[72] S24. STATE OVERSEERS

I. SELECTION

1. That State Overseers be appointed by the General Executive Committee and that a rating instrument be designed to indicate the State Overseers' performance and that this rating sheet substitute for the preference ballot as the primary source of information. Also, that a place be provided on the rating sheet for the individual's preference for State Overseer.

2. Further, That State Overseers be installed in a Commissioning Service at the General Assembly.

IV. ORIENTATION

Oversees who are appointed for the first time shall be given a [73] period of orientation immediately following their appointment by the Executive Committee (60th A., 1984, pp. 42, 43).

V. TERM OF OFFICE

His term of office to be two years, terminating the Sunday following the close of the General Assembly. He cannot serve more than eight consecutive years and only four years in one state. He may be eligible for reappointment after serving in some other capacity for at least two years (46th A., 1956, p. 28).

VI. DUTIES AND AUTHORITIES

The duties and authorities of the State Overseer shall be:

1. To arrange for and assist in conducting a general evangelistic campaign throughout his state or territory.

2. To appoint district overseers, pastors, and make changes or fill vacancies in pastorates, when necessary.

3. To approve the setting in order of churches before organization is effected.

4. To approve the selection, purchase, and construction of all church, parsonage, or Sunday School properties, together with the respective district overseers.

5. To officiate at all ordination services in his territory, sign credentials of all ministers in his territory who have been approved by the General Overseer, or return such credentials to the General Overseer giving reasons for not signing.

6. To sign revocation when terminating the ministry of any individual.

7. To discontinue inactive churches; sign a report of same on forms prepared for this use and send to the General Overseer.

8. To transfer members of churches which have ceased to exist, to the church most convenient for the member.

9. To appoint any officer in a local church, YPE, Sunday School or Ladies Ministries, when necessary.

10. To pass on all questionnaires of applicants to the ministry in his territory who are considered worthy, and sign such applications showing his endorsement of the applicant before submitting applications to the General Overseer.

11. To decide the bounds of each district in his state or territory.

12. To report the organization of new churches to the General Secretary-Treasurer on forms prepared for same.

13. He shall conduct a convention on each district once each year or group two or more districts for one convention, and at least one state convention, giving general instructions in doctrine and general interest of the Church.

14. He shall call district or state ministers' meetings or prayer conferences to arrange for state program.

15. Before launching large financial state projects, he is to have the approval of the General Executive Committee.

16. Where a State Overseer is serving as pastor or has relatives [74] who are members of the Church, or other conditions that would render him incapable of giving a fair trial to an offending member who has been excluded from the Church, he has a right to appeal to the General Overseer, who shall select two Ordained Ministers to sit with him to decide whether or not the offending party should have another trial.

17. The State Overseer, with the district overseer, may authorize Exhorters to pastor churches, baptize, and receive members into the Church when such authority is necessary or in case of an emergency.

18. The State Overseer shall make monthly reports to the General Overseer on forms prepared for such reports.

19. To leave all records pertaining to the state work, such as minister's reports, church clerks' reports, ledgers, financial records, state board decisions, or any other record of importance, in the files in the state office for his successor's information.

20. He is expected to live in the state or province over which he is made overseer.

[84] S37. RELATIONSHIP OF THE LOCAL CHURCH TO THE GENERAL ASSEMBLY

(58th A., 1980, pp. 38, 39 [9])

1. The Church of God has a centralized form of church government. The local churches, the names of which are recorded, are the results of the faithful services of the ministers and representatives of the General Assembly; and these churches, when thus received by the representatives of the General Assembly, then become and compose constituents of the General Assembly. Therefore, the right of any local church as a whole to withdraw from the General Assembly is not recognized and does not exist, but those members who prove disloyal to the government and teachings as promulgated from time to time by the General Assembly or who are otherwise disorderly are to be dealt with as individuals.

2. The General Assembly of the Church of God is that organized body with full power and authority to designate the teachings, principles, and practices of all the local churches composing said Assembly.

3. The General Assembly governs the operation of the Church of God at all structural levels: International, national, state, district and local. The General Assembly has vested in the office of the State Overseer authority over the local churches. Some of his powers, all of which are more fully explained elsewhere in the *Minutes*, can be exercised to remove pastors, to appoint pastors, to declare the offices of the local trustees vacant and to appoint a special Board of Trustees, which may be the State Board, to hold title to such local property.

4. A local Board of Trustees shall hold title to, manage, and control pursuant to the direction of the local congregation all real estate owned by the local congregation by which they are selected provided that all such property shall be used, managed and controlled for the sole and exclusive use and benefit of the Church of God, Cleveland, Tennessee, U.S.A. In the event that the majority or all of the local church depart from the faith or discontinue fellowship with the organization, the State Overseer shall at any time have power to appoint other trustees to hold the property for the Church of God.

5. Local churches, when they have been accepted into the Church of God, are therefore bound by the decisions of the General Assembly in matters of doctrine, teaching, and polity.

[85] S38. MEMBERS

(45th A., 1954, p. 27; 61st A., 1986, p. 54 (4).)

I. PROCEDURE FOR RECEIVING MEMBERS INTO THE CHURCH

1. Church membership is Scriptural and any person presenting himself as a prospective member is making a serious and far-reaching decision. It is the responsibility of the pastor to see that all persons making themselves available for membership are fully informed of the doctrine, teachings, government, and heritage of the Church of God. In keeping with this responsibility, the pastor shall inform all persons presenting themselves for membership through one or more of the following ways:

A. Counsel with prospective members privately concerning the membership requirements and their responsibilities to them.

B. Conduct special membership classes where prospective members are taught membership requirements.

C. Read and explain the membership requirements in a public meeting.

2. Following this procedure, the minister shall invite prospective members to stand before the altar and face the con-

gregation. The minister shall then proceed by giving the following charge to the applicants as he stands before them:

3. You realize in presenting yourself for membership that you are assuming a solemn obligation, and it is expected that you will always be true to your promise and faithfully fulfill and discharge your obligation as a loyal member.

4. Are you willing to abide by and subscribe to the discipline of the Church of God as outlined by the Scripture and set forth in the *Minutes* of the General Assembly? (I am.)

[86] III. LOCAL CHURCH PART OF THE ASSEMBLY

1. The local churches, the names of which are recorded are the result of the faithful services of the ministers and representatives of the General Assembly, and these churches, when thus received by the representatives of the General Assembly, then became and composed a part of the General Assembly. Therefore, the right of any local church as a whole to withdraw from the General Assembly is not recognized and does not exist, but those members who prove disloyal to the government and teachings as promulgated from time to time by the General Assembly, or who are otherwise disorderly are to be dealt with as individuals (15th A., 1920, p. 50; 45th A., 1954, pp. 27, 28; 50th A., 1964, p. 54).

2. If a church is organized and they do not accept the teachings of the Assembly, they cannot be recognized by headquarters as a Church of God (15th A., 1920, p. 68; S2, I, 1, p. 33).

IV. INCORPORATION OF CHURCHES

That steps be taken to dissolve the incorporation of states and local churches where practical and that where it is necessary to incorporate states or local churches, that said action be first approved by the General Executive Committee (44th A., 1952, p. 30).

[97] S45. CHURCH PROPERTY

I. LOCATION AND PLANS

Location and plans for new church buildings and parsonages are to be submitted to and approved by the State and District Overseer in their respective territories (35th A., 1940, p. 30).

II. DEED

1. Our adopted deed form is to be used in purchasing real estate for church property, except in states that require using their own [98] deed form. In this event the essential clauses of our uniform deed are to be inserted (31st A., 1936, p. 32).

2. All deeds on new local church property are to be submitted to the state office for approval before they are recorded in their respective counties (46th A., 1956, p. 24).

III. INSURANCE

Pastors and churches are to be required to keep all property under their care adequately insured where practical (38th A., 1943, p. 30).

S46. LOCAL BOARD OF TRUSTEES

1. Each local church or congregation that owns any real estate, such as a church building or parsonage, shall appoint a Local Board of Trustees, to consist of not less than three members, said board to be selected by the local congregation in a business meeting (S37, 4, p. 84).

2. Members of the Local Board of Trustees shall hold office until their successors are appointed. The Local Board of Trustees shall hold title to, manage, and control, pursuant to the direction of the local congregation, all real estate owned by the local congregation by which they are selected, provided that all such property shall be used, managed, and controlled for the sole and exclusive use and benefit of the Church of God.

3. The said Local Board of Trustees shall have full right, power, and authority to buy property for the use or benefit of the local congregation; sell, hypothecate, exchange, transfer and convey any of the local property held by it or to borrow money and pledge the said property for the repayment of the same and to execute all necessary deeds, conveyances, etc., provided that the proposition shall first be presented to a regular or called conference of the local church presided over by the State Overseer, or one whom he may appoint, and approved

by a two-thirds majority vote and provided further that the Board have a certification from the State Overseer, or one whom he may appoint, that the proposition is not adverse to the interest of the Church of God (53d A., 1970, pp. 46, 47 (16).

4. If any local church shall cease to function or exist, then the Local Board of Trustees shall hold the local property as trustees for the Church of God generally in the state where located, and said local board shall convey the local property to the state board, to be used and disposed of by it for the use and benefit of the church in that state generally; or said state board may use the said property, or the proceeds derived from the sale of the same for the founding of another church in the state, or the promotion of one already existing.

[99] 5. If the Local Board of Trustees has ceased to exist or to perform its duties, then the State Overseer shall have the right to declare all offices thereon vacant and to appoint a special Board of successor Trustees, which may be the State Board of Trustees for that State, who shall thereupon automatically hold title.

6. Furthermore, in the event of dissension within a local church of the Church of God, the State Overseer of the Church of God for the state in which such local church is located shall have power to declare the offices on the Local Board of Trustees vacant and to appoint a special Board of Trustees, which may be the State Board of Trustees, as successors to the Local Board of Trustees, and such special Board so appointed shall automatically then hold title to such local property (53d A., 1970, pp. 46, 47 (16).

[113] S59. GENERAL INSTRUCTIONS

7. Believing a centralized form of government to be the Biblical standard for our churches, the Church of God early adopted such a form of government and has consistently practiced a centralized form of government (S1, III, (3), p. 31; S2, I, 1, p. 33).

8. Be it therefore resolved that the General Assembly does not recognize or approve the practice of our ministers setting

up independent congregations who do not subscribe to the doctrines, [114] faith, practices, teachings, and government of the Church of God (S1, III, (3), p. 31; S2, I, 1, p. 33).

9. Be it further resolved that we do not approve our ministers pastoring or otherwise assisting such independent congregations and so declare that ministers who persist in doing so are out of harmony with our declared policy of centralized government; and appropriate action should be initiated by proper authorities against offending ministers (46th A., 1956, p. 27).

APPENDIX V

UNITED STATES CONSTITUTION

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Supreme Court, U.S.
FILED
JAN 5 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-887

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

SOUTHERN OHIO STATE EXECUTIVE OFFICES OF CHURCH OF GOD AND DR. HAROLD B. THOMPSON, SR., STATE OVERSEER,

Petitioners,

v.

FAIRBORN CHURCH OF GOD AND REV. ANCIL CARTER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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QUESTION PRESENTED

Whether the Ohio Courts' determination of a dispute between a local church and a state-wide board of the denomination to which it belonged, concerning ownership of property located in Ohio, by applying neutral principles of Ohio law, contravened the First Amendment right to free exercise of religion where neither the dispute nor its resolution entailed any question of or required any determination of religious doctrine, church polity or tenets of faith.

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Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Respondents FAIRBORN CHURCH OF GOD and REV. ANCIL CARTER respectfully pray that the petition for a writ of certiorari to review the judgment of the Supreme Court of Ohio entered in this proceeding on September 6, 1989, be denied.

OPINIONS BELOW

The unpublished decision of the Supreme Court of Ohio, dated September 6, 1989, dismissed Petitioners' appeal on the ground that it presented no substantial constitutional question. (That decision is annexed as Appendix I to the Petition for a Writ of Certiorari).

The Court of Appeals of Ohio, in an unpublished Opinion dated March 29, 1989, affirmed the Trial Court's grant of summary judgment for Respondents. (That Opinion is annexed as Appendix II to the Petition for a Writ of Certiorari). The Court of Common Pleas of Greene County, Ohio granted summary judgment for Respondents in an Opinion which is also unpublished. (That Opinion is annexed as Appendix III to the Petition for a Writ of Certiorari).

JURISDICTION

The jurisdiction of this Court is invoked by Petitioners under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioners contend that this case involves the First and Fourteenth Amendments to the United States Constitution. Respondents dispute that contention. The resolution of the property dispute at issue between the parties does not raise First Amendment concerns.

STATEMENT OF THE CASE

This case involves a property dispute between Respondent, an Ohio landowner, which, according to Ohio law, holds the property in fee simple in its own name, and Petitioner, which claims to have an interest in that property. Court of Appeals Opinion, Slip Op., at Appendix p. 9.[1] Respondent Fairborn Church of God is an Ohio non-profit corporation organized in

[1] All citations to the Opinions of the Courts below are hereafter cited to the pages of the Appendix to the Petition for Writ of Certiorari as "App., p. ___."

1963.[2] Its pastor is Respondent Rev. Ancil Carter. App., pp. 10-11. Petitioner is the Southern Ohio State Executive Offices of Church of God, also an Ohio non-profit corporation. Petitioner Dr. Harold B. Thompson is the State Overseer of that organization which represents, on the state level, the national Church of God of Cleveland, Tennessee. App., p. 10.

The matter in issue concerns real property located in Ohio[3] which is titled in the name of Respondent Fairborn Church and which was purchased with monies raised by the local church, without any material assistance from Petitioners. App., p. 14. Petitioners sought a declaratory judgment from the Ohio Courts that Respondents held the real property in trust for the Church of God, Cleveland, Tennessee and that Respondents were required to obtain permission from Petitioners prior to conveying any interest in the real property. App., p. 9. Petitioners based their claim on certain statements propounded by the General Assembly of the Church of God, as reflected in its Minutes, which prescribed a form of deed to be used in any conveyance of real property to a local church. Specifically, the deed form was to contain the language:

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[2] Pursuant to Rule 29.1 of the Rules of the Supreme Court of the United States, Respondent Fairborn Church of God informs the Court that it has no parent or subsidiary companies.

[3] The property which gave rise to this dispute is an unimproved parcel of land which Respondents proposed to convey to two third parties. It was anticipated that this transaction would not only yield a profit to the Fairborn Church but would result in its acquisition, by exchange, of another unimproved parcel on which it hoped to build a new church for its congregation.

> "The said Local Board of Trustees shall hold title to, manage and control the said real estate for the general use and benefit of the Church of God, having its general headquarters in Cleveland, Tennessee, and for the particular use and benefit of the local congregation of the said Church . . . ."

The Minutes further required the local congregation to seek approval for all conveyances of real property from the State Overseer. App., p. 12.

There is no dispute that the deeds to the property in question did not contain the prescribed language; nor was permission sought from or granted by the State Overseer to convey the property in question. App., pp. 12-13. Upon learning of Respondents' intent to convey a portion of the unimproved land, Petitioners asserted their interest by way of a filing in the County Recorder's Office and then commenced this action for a declaratory judgment that the Fairborn Church held the property in trust for the parent organization. *Id.* at 13.

Each of the lower courts ruled against Petitioners. Applying neutral principles of law, the lower courts held that under Ohio law, Respondent Fairborn Church "holds title to the property in fee simple" and "has the authority to enter into a binding contract to convey the property in question," (App., p. 37) and that no trust, explicit, implied, or constructive, was created under Ohio law in favor of the Church of God, Cleveland, Tennessee App., pp. 22-25. The Supreme Court of Ohio denied Petitioners' motion to certify the record below and dismissed its appeal, "for the reason that no substantial constitutional question exists therein." App., p. 1.

REASONS FOR DENYING THE WRIT

The Petition for Writ of Certiorari presents this Court with no important, unsettled question of federal law; nor do the decisions of the Ohio Courts conflict with the Constitution or applicable decisions of this Court. Instead, in conformity with those decisions, the Ohio Courts resolved this pure property dispute through application of neutral principles of Ohio law. This dispute over an unimproved piece of land was resolved on "objective, well-established concepts of trust and property law," *Jones v. Wolf*, 443 U.S. 595, 603 (1979), and the result reached was correct as a matter of Ohio law. The Ohio Court made no incursions into matters of religious dogma, church polity or religious tenets. Indeed, this action presents no question whose resolution turns on any examination, much less a determination of religious practice or doctrine, or on any determination of the right to exercise religious authority. Petitioners' attempt to cast this matter as one involving issues of "doctrine or polity" finds no basis in the facts in this record or the actions of the Ohio Courts.

I. THIS COURT'S PRIOR DECISIONS ESTABLISH THAT A STATE MAY CONSTITUTIONALLY ADOPT NEUTRAL PRINCIPLES OF LAW AS A MEANS OF ADJUDICATING CHURCH PROPERTY DISPUTES AND DO NOT MANDATE DEFERENCE TO PETITIONERS' ASSERTION OF AN OWNERSHIP INTEREST MERELY BECAUSE PETITIONER VIEWS ITSELF AS A HIERARCHICAL DENOMINATION

A. Use Of Neutral Principles Of Law To Resolve Church Property Disputes Is Constitutionally Permissible.

In *Jones v. Wolf*, 443 U.S. 595, 602-604 (1979), this Court held that a state may adopt neutral principles

of law as a means of adjudicating a church property dispute without contravening the strictures of the First and Fourteenth Amendments to the Constitution. While the First Amendment "prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice," it does not dictate, beyond that, any method which must be used to resolve such disputes, and the states are free to adopt "*any* one of various approaches . . . so long as it involves no consideration of doctrinal matters" such as ritual, liturgy or tenets of faith. *Id.* at 602 (emphasis in original).

Ohio has approved the use of the neutral principles of law standard for resolving church property disputes. *Serbian Orthodox Church Congregation of St. Demetrius v. Kelemen*, 21 Ohio St. 2d 154, 159, 269 N.E.2d 212, 216, *cert. denied*, 400 U.S. 827 (1970). Adoption of that standard is constitutionally permissible. *Jones v. Wolf*, 443 U.S. at 604.

B. Mandatory Deference To Petitioners' Views Of How This Property Dispute Should Be Resolved Is Not Required.

Petitioners argue that the First Amendment and this Court's prior decisions preclude the use of neutral principles of law to resolve this dispute over ownership of a piece of land and, instead, mandate that the Ohio Courts defer to Petitioners' view that Petitioners own an interest in this land. Petition, pp. 5-10. According to Petitioners, because they view the Church of God, Cleveland, Tennessee, as a hierarchical church and because they assert that the hierarchical structure of the church is mandated by religious belief, the civil courts may not determine purely secular issues of title to land in any manner

inconsistent with the position they take on ownership. Petitioners' argument rests on a fundamental misunderstanding of this Court's prior decisions and a dogged refusal to acknowledge the actual nature of the dispute which was before the Ohio Courts.

As this Court observed in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969), "not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment." The decisions of the Ohio Courts in this case not only do not jeopardize First Amendment values, they do not even implicate them at all, much less to the extent that mandatory deference to religious authority on religious matters is required.

The First Amendment prohibits civil courts from resolving disputes on the basis of religious practice and doctrine. It does not mandate a compulsory deference to church authority whenever the parties to a controversy happen to be religious organizations or church property is involved. *Jones v. Wolf*, 443 U.S. at 605. Deference to religious authorities on religious matters may be mandated only when the resolution of the dispute requires a determination of a religious controversy, or where the right to property is incident to such a determination. If the dispute can be resolved without inquiry into religious doctrine, no constitutional question is raised. *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367, 368 (1970) (per curiam); *Presbyterian Church v. Hull Church*, 393 U.S. at 449.

This case presents no religious controversy at all, only a dispute over property. App., pp. 26-27. Indeed,

the property giving rise to this dispute is vacant land and does not even contain a house of worship. In order to resolve the dispute, no determination was made or had to be made of matters of religious belief or church polity. There was no schism here, no divided congregation each vying with the other to occupy the house of worship, no attempt by Respondents to withdraw from the denomination, and no conflicting claim as to the right to exercise religious authority. *Id.* This stands in sharp contrast to those situations in which this Court has indicated that the First Amendment constrains the civil courts to defer to religious authority because the resolution of the property dispute requires and, indeed, is incidental to resolution of an underlying religious dispute.

For example, in *Presbyterian Church v. Hull Church*, this Court held that First Amendment values were jeopardized by the Georgia courts' resolution of a property dispute between two local churches and the parent church from whom they had split. The Georgia courts determined the dispute by application of state law under which the right to the church property turned on whether the general church had abandoned the tenets of faith to which it had adhered at the time of the local church's affiliation. In contrast to the dispute at issue here, any resolution of the property dispute in *Hull Church*, under the "departure-from-doctrine" theory applied by the Georgia courts, of necessity required the civil courts "to determine the matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion." *Id.* at 450. *Compare, also, Jones v. Wolf*, 443 U.S. 595 (1979) (remanding for reconsideration and articulation

of rationale used in awarding ownership of church property, deeded to local church, to majority faction, following a schism in the local church, where the church hierarchy had determined that the minority faction represented the true congregation); *Serbian Eastern Orthodox Diocese for the United States and Canada v. Milivojevich*, 426 U.S. 696 (1976) (incidentally involving control of church property but essentially a religious dispute concerning the authority within the church to organize dioceses and appoint the church bishops); *Kedroff v. Saint Nicholas Cathedral of the Russian Orthodox Church in North America*, 344 U.S. 94 (1952) (resolution of issue of right to use and occupy cathedral dependent upon which group within church hierarchy had religious authority to elect archbishop); *Watson v. Jones*, 80 U.S. 679 (1872) (involving schism within local congregation and question of which of two bodies was to be recognized as the church).

II. THE COURTS BELOW CORRECTLY APPLIED NEUTRAL PRINCIPLES OF LAW TO DETERMINE THIS DISPUTE

The application of neutral principles of law to resolve disputes over church property was described in *Jones v. Wolf*, 443 U.S. at 603, as:

> "[S]ettling a local church property dispute on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property and the provisions in the constitution of the general church concerning the ownership and control of church property."

The neutral principles of law approach to resolving such property disputes relies "exclusively on objec-

tive, well established concepts of trust and property law." *Id.* The Court looks to deeds and other title documents, state law and, where relevant, church documents, to determine where title to the property properly resides and whether there is any legally cognizable basis for imposing a trust on the property. *Id.* at 602-603. *Accord: Eldership v. Church of God at Sharpsburg*, 396 U.S. at 370 (Brennan, J. concurring).

That procedure was followed precisely by the Court of Appeals in this case, including reference to the Minutes of the General Assembly and other governing documents of the Church of God. App., pp. 21-22. Applying objective concepts of law, the Court determined that none of those documents created an interest in the property in Petitioners recognized under Ohio law. *Id.* at pp. 22-25.

Petitioners nevertheless argue that the courts below and, in particular, the Court of Appeals, failed to apply these neutral principles in a manner consistent with the First Amendment. Petitioners contend that the Courts failed to consider any portion of the denominational canons, save one, and impermissibly refused to consider the portions of those church documents incorporating religious concepts. These contentions find no support in the Opinion of the Court of Appeals. Moreover, Petitioners' contention that consideration of the canons either mandates a recognition of an ownership interest in the property or compels deference to their interpretation of their ownership interest—and not application of neutral principles of law—is in error.

The Court of Appeals did, in fact, consider church documents in order to determine whether or not they,

in conjunction with the deeds and other secular documents, created any property interest in Petitioners which was legally cognizable under Ohio law. While the Court of Appeals' decision does quote only one portion of the church canons in full text,[4] the opinion is explicit in stating that the church documents, as a whole, were considered insofar as they bore on the issue of ownership of property:

> "[W]e shall consider those passages in the Minutes and Polity documents which may be analyzed on a secular basis . . . . We cannot find that the terms of the Minutes, their supplements or the Polity documents, create an 'express trust' favoring the general church. The terms of the Supplement to the Minutes quoted above provide that the local church and congregation shall hold title to and manage and control the property. Those terms further provide that such ownership shall be discharged for the 'sole and exclusive use and benefit of the Church of God, Cleveland, Tennessee.' At most, these *provisions, and others concerning use of deeds*, create a form of 'equitable charge' on the ownership interest of the local church." App., pp. 22-24. (Emphasis added).

Similarly, in stating that it would not base its determination on purely religious passages contained in

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[4] It is quoted as a portion of the church documents cited by Petitioners "as a basis for their claim" and as an example of a provision which is purely secular in nature. App., p. 21.

those documents,[5] the Court was proceeding in strict compliance with the decisions of this Court mandating that application of neutral principles of law be done without delving into matters of doctrine and religious belief. *Jones v. Wolf*, 443 U.S. at 604; *Presbyterian Church v. Hull Church*, 393 U.S. at 449. The Ohio Court examined church documents to determine whether they formed any basis for a trust or any other ownership interest under Ohio law. That is precisely what the application of neutral principles of law requires. *Jones v. Wolf*, 443 U.S. at 603; *Eldership v. Church of God at Sharpsburg*, 396 U.S. at 370 (Brennan, J. concurring).

At heart, Petitioners' argument, although styled as a claim that neutral principles of law were applied in conflict with the First Amendment, is nothing more than a basic disagreement with the Ohio Courts as to whether the language contained in those documents is sufficient to establish an ownership interest in the property in question. While Petitioners try mightily to cast their disagreement in constitutional terms, in the end they are asserting nothing more than an argument that mandatory deference is required to their understanding of the *legal* significance of language in church documents concerning the ownership of property. That argument has been rejected by this Court.

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[5] As an example of the passages which the Court of Appeals considered purely religious, it quoted the following: "the Church of God stands now as it has always stood, for the whole Bible, rightly divided." App., p. 21. None of the canons which Petitioners cite as germane to a consideration of neutral principles of law (Petition, pp. 15-18) is of this nature, but, instead, fall within the description of the portions of the canons the Court of Appeals explicitly stated that it analyzed.

Jones v. Wolf, 443 U.S. at 605.[6] While *Jones v. Wolf* recognizes that a church can in its constitutional documents, take steps to create an express trust in its favor, the civil courts are "bound to give effect to" those intentions "provided [they are] embodied in some *legally cognizable form.*" *Id.* at 606. (Emphasis added). The simple fact is that the Ohio Courts found as a matter of Ohio law, that whatever Petitioners' intentions, they had failed to establish an interest in the property in a form legally cognizable in Ohio. *In Re Estate of Hoffman*, 175 Ohio St. 363, 367-368, 195 N.E.2d 106, 109-110 (1963). While Petitioners are unhappy with that result, the Ohio Courts' construction of Ohio law gives rise to no substantial federal question, much less one of constitutional proportions.

III. THE OHIO COURTS' DETERMINATION OF OHIO TRUST LAW PRESENTS NO FEDERAL QUESTION FOR THIS COURT TO REVIEW

Petitioners' final argument in support of its petition asserts that the Ohio Courts erred in failing to recognize a constructive trust in their favor under Ohio law. Petition, pp. 25-30. This assignment of error, however, presents no federal question as is necessary

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[6] Petitioners' alternative argument that application of neutral principles of law to this dispute is impermissible, and that mandatory deference is required because this dispute cannot be determined without resolution of a doctrinal issue (Petition, pp. 22-23) is entirely misplaced. This is not a situation where the resolution of a property dispute would require a court to first determine who subscribed to the true tenets of faith of a church or who was the duly appointed archbishop of a church in order to construe the deeds and other documents bearing on title. *Compare, Hull Church*, 393 U.S. at 449; *Serbian Church v. Milivojevich*, 426 U.S. at 709.

to sustain this Court's jurisdiction under 28 U.S.C. § 1257(3).[7]

Moreover, the decisions of the Ohio Courts in this case were correct as a matter of Ohio law. Ohio law does not recognize (and has not recognized since at least 1834) an implied trust under these circumstances, *Serbian Orthodox Church Congregation of St. Demetrius v. Kelemen*, 21 Ohio St. 2d 154, 160, 256 N.E.2d 212, 217, *cert. denied*, 400 U.S. 827 (1970); *Keyser v. Stansifer*, 6 Ohio 363 (1834), and the imposition of a constructive trust under Ohio law is used, as the Court of Appeals correctly held, as a remedy for unjust enrichment. *Ferguson v. Owens*, 9 Ohio St. 3d 223, 226, 459 N.E.2d 1293, 1295 (1984) (per curiam); *Dixon v. Dixon*, 4 Ohio St. 3d 160, 162 n.4, 447 N.E.2d 756, 757 n.4 (1983). In this case, the Ohio Courts found on the record that there was no unjust enrichment.

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[7] Petitioners' attempt to cast this issue as one of constitutional significance is based on its assumption (rejected by the Ohio Courts) that its canons "clearly place ownership" in the parent church as a matter of Ohio law, and its assertion that the local congregation benefits from its association with the denomination, and has no power to withdraw from the denomination (which Respondents have never sought to do). Petitioners argue that the Ohio Courts' failure (a) to resolve this dispute in Petitioners' favor; (b) to adopt their view of the legal significance under Ohio law of the language of church documents; and (c) to adopt their view of the legal significance of the benefits they believe they confer on the local congregation, violates their First Amendment rights by preventing their free exercise of religion. Petitioners' argument, at best, is nothing more than yet another reiteration of their erroneous contention that mandatory deference to their view of proper ownership of the property is constitutionally mandated.

CONCLUSION

For the reasons stated above, Respondents Fairborn Church of God and Rev. Ancil Carter respectfully request that the Petition for a Writ of Certiorari to the Supreme Court of Ohio be denied.

Dated: January 5, 1990

Respectfully submitted,

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